

(21,898.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 155.

METROPOLITAN REDWOOD LUMBER COMPANY, CLAIM-
ANT OF THE STEAMER "SAN PEDRO," APPELLANT,

vs.

CHARLES P. DOE, OWNER OF THE AMERICAN STEAMER
"GEORGE W. ELDER," ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATE FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print
Caption	<i>a</i>	1
Statement of clerk as to parties counsel and filing of papers	3	2
Præcipe for record	5	3
Libel.....	7	4
Claim of Metropolitan Redwood Lumber Co	11	7
Claim of Elk River Mill & Lumber Co.....	13	8
Answer of Metropolitan Redwood Lumber Co.....	15	9
Findings of fact.....	18	10
Decree, January 7, 1909	19	11
Report of United States commissioner	20	12
Stipulation as to facts.....	24	14
Decree of January 7, 1909.....	25	15
List of crew of steamer "Geo. W. Elder," &c.....	26	16
Exceptions to report of commissioner.....	29	17
Order overruling exceptions.....	32	19
Final decree	33	20
Order staying execution.....	37	22
Summons to join in appeal	38	23

	Original.	Print
Affidavit of service of summons.....	40	24
Order of severance	42	25
Petition for appeal	44	26
Order allowing appeal.....	45	26
Assignment of errors	46	27
Judge's certificate as to question involved on appeal.....	48	28
Order staying execution.....	50	29
Citation and service (copy).....	51	29
Clerk's certificate.....	52	30

a In the District Court of the United States in and for the Northern District of California.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," et al.

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, etc., and CARGO.

1 *Statement of Clerk District Court.*

In the District Court of the United States in and for the Northern District of California.

No. 13677.

CHARLES P. DOE and G. M. JESSEN et al.

vs.

STEAMER "SAN PEDRO" and CARGO, etc.

Parties.

Libelants:

(Original Parties). Charles P. Doe, G. M. Jessen. (Persons becoming parties thereto). Crew composed of G. M. Jessen, Thos. McTague, P. McClure, C. Smith, J. Haggard, G. Hansen, F. Brady, O. Bereton, G. Folvig, W. Miller, R. Curtis, T. Gunther, A. Hendrickson, J. Grant, M. Johnson, J. Mullins, N. Egeness, C. Erickson, O. A. Adams, C. C. Hoven, J. S. Hughes, W. B. Coughlin, T. Russell, G. Shatto, J. Russell, F. Elliott, O. Anderson, T. Berliner, A. Cares, J. Heyline, M. Miller, F. Topia, B. Deguzee, W. M. Smith, J. J. Darrell, E. Canard, Mrs. D. Wood, Geo. Stevenson, E. Horryan, A. Herstadt, E. Evans, W. Couplant, C. Codfrey, G. Simmean, R. Cavanaugh, G. Milwain, H. Sadyard, R. Wyatt, T. Shepard, T. McFarlan, C. Gross, C. Patterson, T. Wershington, R. Ricketts, W. Clementson.

Respondent:

The Steamer "San Pedro," her engines, boilers, machinery, tackle, apparel, furniture, boats and cargo.

Claimants:

The Metropolitan Redwood Lumber Company, as to Steamer "San Pedro."

The Elk River Mill and Lumber Company, as to cargo of said "San Pedro."

Proctors.

Libelants:

F. A. Cutler, Esq., and F. R. Sweasey, Esq.

Respondent:

Messrs. Page, McCutchen and Knight.

Claimants:

Messrs. Page, McCutchen and Knight, and Mr. William Denman, for the Metropolitan Redwood Lumber Co.

Messrs. Page, McCutchen and Knight, for the Elk River Mill and Lumber Co.

3

1907.

July 31. Filed verified Libel.

Issued Monition for attachment of Steamer "San Pedro," and which said Monition was afterwards on the 9th, day of August, 1907, returned and filed with the following written return of the United States Marshal endorsed thereon:

"In obedience to the within Monition, I attached the Steamer "San Pedro," her tackle, apparel, furniture and cargo, therein described, on the 2nd, day of August, 1907, and have given due notice to all persons claiming the same that this Court will on the 13th, day of August 1907, (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I therefore return that I served a copy of this Monition, together with a copy of the Libel, herein, upon T. G. Atkinson, the owner of said Steamer "San Pedro," her tackle apparel, furniture and cargo, at Eureka, California, and placed a keeper in charge thereof.

C. T. ELLIOTT,
United States Marshal,
By J. A. PRENTICE,
Field Deputy.

Eureka, Cal. August 2nd, 1907."

August 8. Filed Stipulation for Costs.
Filed Claim of Metropolitan Redwood Lumber Company, as to Steamer "San Pedro."
Filed Claim of Elk River Mill and Lumber Company, as to the Cargo of said Steamer "San Pedro."
Filed Admiralty Stipulation in the sum of \$17,500.00, for release of Steamer "San Pedro," with Metropolitan Surety Company, as surety.

4

1907.

- August 8. Filed Admiralty Stipulation in the sum of \$2,500.00, for the release of the Cargo of "San Pedro," with Metropolitan Surety Company, as Surety.
- Oct. 31. Filed Answer of Metropolitan Redwood Lumber Company.

1908.

- August 15. On this day, by consent of Proctors for Respective Parties, Ordered cause submitted on Testimony and Exhibits on file, to the Court, on Briefs. (John J. De Haven, Judge.)
- Dec. 31. Filed Findings of Facts and Conclusions of Law. Ordered case referred to Jas. P. Brown, United States Commissioner, to ascertain and report value of cargo, etc., at the time of reaching port.

1909.

- Jany. 4. Filed Corrected Findings of Facts and Conclusions of Law, as of December 31st, 1908.
7. Filed Decree.
- March 26. Filed Report of Jas. P. Brown, United States Commissioner, as to value of Cargo, etc., upon reaching port.
29. Filed Exceptions to Report of United States Commissioner Jas. P. Brown.
- May 20. Exceptions to Report of United States Commissioner Jas. P. Brown, overruled and Report Confirmed.
- June 4. Filed Final Decree.
- July 9. Filed Petition to Appeal to the Supreme Court of the United States.
- Filed Order allowing same.
- Filed Certificate on Appeal.
- Filed Assignment of Errors.
12. Filed Bond on Appeal in the sum of \$6,500.00.

- 5 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, etc., et al., Libellants,

vs.

STEAMER "SAN PEDRO," etc.

(Præcipe for Record.)

To the Clerk of the above entitled court:

Please prepare a transcript of the following documents, constituting a part of the record, in the above entitled cause, to be transmitted to the Clerk of the Supreme Court of the United States:

The libel, the claim, the answer, the opinion dated December

31, 1908, the interlocutory decree entered January 7, 1909; the Commissioner's Report (omitting the testimony), the exceptions to the Commissioner's Report and affidavits supporting them, order overruling exceptions to Commissioner's report, the final decree entered June 4, 1909, the order staying execution, the summons to join in the appeal and the affidavit of W. S. Burnett, the order of severance, the certificate as to jurisdiction, the petition for appeal to the United States Supreme Court and order allowing the appeal, the assignment of errors, the order staying execution, the citation and the præcipe.

Please also prepare a caption exhibiting the proper style of the court and title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who had become parties before the appeal, if any change has taken place; the several dates

6 when the respective pleadings were filed; whether or not the defendant was arrested, or appeal taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner or commissioner-, and if so, the result of the proceedings and report thereon; and the date of the entry of the interlocutory and final decrees.

Please page the copy of the record thus made up and make an index thereto and certify the entire document at the end thereof, under the seal of the court, to be a transcript of the papers and pleadings, which they purport to be contained in the record of the District Court, in the above entitled cause.

PAGE, McCUTCHEN & KNIGHT,
WILLIAM DENMAN,

*Proctors for Claimant, Metropolitan
Redwood Lumber Company.*

Endorsed: Filed Nov. 1, 1909. Jas. P. Brown, Clerk, By M. Thomas Scott, Deputy Clerk.

7 In the District Court of the United States in and for the Northern District of California. In Admiralty.

(Libel.)

To the Honorable John J. De Haven, Judge of the District Court of the United States in and for the Northern District of California:

The Libel of Charles P. Doe, owner of the American Steamer "George W. Elder," of Portland, Oregon, and of G. M. Jessen, Master of the said steamer, for themselves and all others entitled against the steamer "San Pedro," now lying at the port of Eureka, California, and within the district aforesaid, whereof M. Hansen is or lately was Master, her engines, boilers, machinery, tackle, apparel, furniture, boats and cargo laden on board the said vessel at the

time when the salvage services hereinafter mentioned were rendered, and against all persons intervening for their interests therein, in a cause of salvage, civil and maritime, allege and propound as follows:

1.

That on the 20th day of July last past the aforesaid Steamer "George W. Elder" of 1700 tons burden, whereof the said Charles P. Doe, was the then owner, and the said C. M. Jessen was Master, and having a crew of 60 men, sailed from the port of San Francisco, on a voyage to Portland, Oregon, via Eureka, California.

2.

That while proceeding on the voyage aforesaid at about 6 o'clock A. M. on the 21st day of July, 1907, the said Steamer "George W. Elder" being at sea, about ten miles west of Shelter Cove, the weather being foggy, encountered a steamer with flag of distress flying, her aftermast broken off, and being in a water-logged condition, 8 whereupon the said Captain of the "George W. Elder" hauled up for and stood ready to render whatever assistance that might be required of him, that said Steamer proved to be the "San Pedro," from Eureka, California, of 300 tons burden of the value of \$60,000.00 bound for San Francisco with a cargo of lumber of the value of \$2500.00.

3.

That said Steamer "San Pedro" was in a leaking and almost sinking condition, her deck being submerged and listing heavily to starboard she was in imminent danger of turning over and becoming wholly lost; that the master and crew of the "San Pedro" remained on board and requested of the master of the "George W. Elder" a tow; that in accordance with said request a steel hawser and afterwards two rope hawsers were fastened to said "San Pedro," which parted; that thereafter the master of the "San Pedro" and his crew came on board the said "George W. Elder" and reported that they would not longer remain on the "San Pedro" but that they abandoned her and she then and there became a derelict; that the weather at said time was foggy, the said "San Pedro" was drifting in the pathway of coastwise vessels and was a menace to commerce.

4.

That the mate and three of the crew of the said "George W. Elder" thereupon went on board said Steamer "San Pedro" and at considerable risk of their lives prepared a tow line by cutting the anchor chain and rigging the said chain to a rope hawser of the said "George W. Elder"; that after eight hours of continuous labor in maneuvering the "George W. Elder" and in adjusting the tow lines the said "George W. Elder" proceeded with said "San Pedro" for Humboldt Bay, the nearest port, a distance of 70 miles, where it arrived at 9:30 o'clock A. M. July 2nd, 1907, and after being beached on the shores of said bay your libellant- undertook such

- 9 temporary repairs as was necessary to preserve said "San Pedro" from further damage and safely moored said steamer at a wharf on said bay, where she now is.

5.

That the adjustment of the towage lines to said "San Pedro" and the progress of the "George W. Elder" on the ocean and across Humboldt Bar to said port of Eureka demanded unusual skill and constant vigilance on the part of the Captain and crew of the "George W. Elder."

6.

That the said libelants by reason of the perils necessarily incurred and the great importance and nature of the services rendered by them in saving the said "San Pedro" and her cargo reasonably deserve to have and therefore claim a commensurate reward for salvage therefore.

7.

That all and singular the premises are true and within admiralty and maritime jurisdiction of the United States and this Honorable Court,

Wherefore, the libelants pray that process in due form of law according to the course of the courts of admiralty and this Honorable Court in a cause of admiralty and maritime jurisdiction may issue against the "San Pedro" her engines, boilers, machinery, tackle, sails, apparel, furniture, boats and appurtenances, and against the cargo aforesaid, and that all persons having or pretending to have any right, title or interest in the said vessel and the cargo may be cited to appear and answer all and singular the matters aforesaid; and that this Honorable Court would be pleased to decree such a sum, or proportion of the value of the said "San Pedro" and her cargo to be due to the libelant- as a compensation of the said salvage services as shall seem to the Court meet, together with their expenses incurred in towing said "San Pedro" and subsequently expended in preserving her, and for such other further relief or *distress* as the Court may be competent to give in the premises.

10

CHARLES P. DOE,
G. M. JESSEN,
Libelant-.

F. A. CUTLER,
F. R. SWEASEY,
Proctors for Libellants.

UNITED STATES OF AMERICA,
Northern District of California, ss:

On this 20th day of July, 1907, before me Nellie Beaumont, a Notary Public in and for the County of Humboldt, State of California, personally appeared the within named Charles P. Doe, and made oath

that he had read the foregoing libel and knows the contents thereof and that the same is true as to his own knowledge except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes them to be true.

CHAS. P. DOE.

Subscribed and sworn to before me this 29th day of July, 1907.

[SEAL.]

NELLIE BEAUMONT,
*Notary Public in and for the
County of Humboldt, State of California.*

Endorsed: Filed July 31, 1907. Jas. P. Brown, Clerk By J. S. Manley, Deputy Clerk.

11 In the District Court of the United States of America,
Northern District of California.

No. 13677. In Admiralty.

CHARLES P. DOE et al., Libellant,
vs.
STEAMER "SAN PEDRO" and HER CARGO.

*Claim of the Metropolitan Redwood Lumber Company as to Steamer
"San Pedro."*

To the Honorable John J. De Haven, Judge of the District Court of
the United States for the Northern District of California:

The claim of Metropolitan Redwood Lumber Company to the
Steamer "San Pedro" her tackle, apparel and furniture, now in the
custody of the Marshal of the United States for the said Northern
District of California, at the suit of Charles P. Doe & Co. et al. al-
leges:—

That Metropolitan Redw'd Lumber Co., — the true and bona-fide
owner of the said Steamer "San Pedro" her tackle, apparel and fur-
niture, and that no other person in owner thereof.

Wherefore, this claimant prays that this Honorable Court will
be pleased to decree a restitution of the same to Metropolitan Red-
wood Lumber Co. and otherwise right and justice to administer in
the premises.

METROPOLITAN REDWOOD LUMBER,
CO.,
By W. A. HAMMOND,
Agent and Attorney in Fact.

12 PAGE, McCUTCHEN & KNIGHT,
Proctors for Claimant.

NORTHERN DISTRICT OF CALIFORNIA, ss:

Subscribed and sworn to before me this 8th day of August A. D. 1907.

[SEAL.]

JOHN FOUGA,
*Deputy Clerk U. S. District Court,
Northern District of California.*

Endorsed: Filed Aug. 8th, 1907. Jas. P. Brown, Clerk. By John Fougá, Deputy Clerk.

13 In the District Court of the United States of America,
Northern District of California.

No. 13677. In Admiralty.

CHARLES P. DOE et al., Libellant,
vs.
STEAMER "SAN PEDRO."

Claim of the Elk River Mill and Lumber Company as to Cargo.

To the Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California:

The claim of Elk River Mill and Lumber Company to the cargo of the Steamer "San Pedro" below deck now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Charles P. Doe & Co., et al. alleges

That Elk River Mill and Lumber Co., — the true and bon- fide owner of the cargo below deck of the Stm. "San Perdo" and that no other person in owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to Elk River Mill & Lumber Co., and otherwise right and justice to administer in the premises.

ELK RIVER MILL & LUMBER CO.,
By J. R. HANIFY COMPANY,
By JOHN L. REED, *Secretary, Agents.*

14 PAGE, McCUTCHEN & KNIGHT,
Proctors for Claimant.

NORTHERN DISTRICT OF CALIFORNIA, ss:

Subscribed and sworn to before me this 8th, day of Aug. A. D. 1907.

[SEAL.]

JOHN FOUGA,
*Deputy Clerk U. S. District Court, North-
ern District of California.*

Endorsed: Filed Aug. 8th, 1907. Jas. P. Brown, Clerk. By John Fougá, Deputy Clerk.

15 In the District Court of the United States for the Northern District of California. In Admiralty.

CHARLES P. DOE et al., Libellants,
vs.
STEAMER "SAN PEDRO" and CARGO.

Answer of the Metropolitan Redwood Lumber Company.

To the Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California:

The answer of Metropolitan Redwood Lumber Company, claimant of the above named Steamer and J. R. Hanify, Claimant, of the cargo laden on board thereof, respectfully shows to the Court.

I.

Answering unto the first article in said libel, the claimants admit the allegations thereof.

II.

Answering unto the second article in said libel, the claimants admit the allegations thereof except that the claimant Metropolitan Redwood Company denies that the Steamer "San Pedro" was of the value of sixty thousand (60,000) dollars or any greater sum than twenty thousand (20,000).

III.

Answering unto the third article in said libel, the respondents admit the allegations thereof, except that as to the allegations that said steamer was in imminent danger of turning over and becoming totally lost and that the master and crew of said vessel reported that they would not remain on said vessel, they are ignorant so
16 that they can neither admit -or deny the same, wherefore they call for proof thereof. They deny, on information and belief, that said vessel became a derelict.

IV.

Answering unto the fourth and fifth articles in said libel, these claimants admit the towage of said vessel by the "George W. Elder" to Eureka and the beaching thereof, but as to all other matters they are ignorant, so that they can neither admit -or deny the same, wherefore they call for proof thereof.

V.

Answering unto the sixth article in said libel the claimants admit that libellants are entitled to a commensurate reward for the services rendered by them, but they are ignorant, so that they can neither admit -or deny the implied allegation of said libel respecting the

necessary incurring of perils in and the great importance of the services rendered.

VI.

Answering unto the seventh article, in said libel, the claimants admit the jurisdiction of this Honorable Court, but deny that all and singular the premises are true except as hereinbefore admitted.

Wherefore, the claimants pray that the Court render such decree in the cause as may be just.

METROPOLITAN REDWOOD LUMBER
COMPANY,

By W. A. HAMMOND, *Its Attorney in Fact.*

PAGE, McCUTCHIN AND KNIGHT,
Proctor- for Claimants.

17 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

W. A. Hammond, being duly sworn, says:—

I am authorized to make this affidavit on behalf of the Metropolitan Redwood Lumber Company. It is not made by any officer of said Corporation because of the fact that said Corporation is organized in the State of Michigan and that all of its officers reside more than one hundred miles from San Francisco. I have read the foregoing answer, the same is true as I verily believe.

W. A. HAMMOND.

Subscribed and sworn to, before me, this 29th day of October.

[SEAL.]

FRANK L. OWEN,
*Notary Public in and for the City and County
of San Francisco, State of California.*

Endorsed: Filed Oct. 31, 1907. Jas. P. Brown Clerk by John Fougla Deputy Clerk.

18 In the District Court of the United States for the Northern
District of California.

No. 13677.

CHARLES P. DOE et al.

vs.

STEAMER "SAN PEDRO" and HER CARGO.

(Findings of Fact, etc.)

1. I find from the evidence, herein, that libelants rendered the service alleged in the libel to the steamer "San Pedro," and her cargo; that such service was a salvage service, and the value thereof is \$4000.00.

2. That the value of the "San Pedro," when brought to the port of Eureka, in her disabled condition, was \$22,000.

As a conclusion of law, from the foregoing facts, I find that libelants are entitled to recover the sum of \$4000.00, with interest thereon from July 20, 1907; The said sum to be paid, pro rata, by the steamer "San Pedro" and her cargo, in proportion to the value of each; that of said sum the owners of the "San Pedro" are entitled to receive \$3000.00, and interest, and the master and members of the crew of the "Geo. W. Elder," the sum of \$1000.00, to be divided pro rata in proportion to the wages received by them; and the case will be referred to United States Commissioner Brown, to ascertain and report the value of the "San Pedro's" cargo when brought to the port of Eureka, and the proportionate amount of said \$4000.00 to be paid by said cargo, and also to ascertain and report the respective amounts due the master and members of crew of the "Geo. W. Elder."

Let such decree be entered.

Dated: December 31, 1908.

JOHN J. DE HAVEN, *Judge.*

Endorsed: Filed Dec. 21, 1908. Jas. P. Brown, Clerk By Francis Krull, Deputy Clerk.

19 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE et al., Libelants,

vs.

STEAMER "SAN PEDRO" and CARGO.

(Decree.)

This cause having been heard on the pleadings and proofs and the Court, after due deliberation, having filed its findings of facts and conclusions of law herein.

It is ordered, adjudged and decreed that the value of the "San Pedro" when brought to the Port of Eureka in her disabled condition was \$22,000.00, and that the libelants recover the sum of \$4,000.00, with interest thereon from July 20th, 1907, as salvage service, and that said sum be paid pro rata by the Steamer "San Pedro" and her cargo in proportion to the value of each; and that of said sum the owners of the "George W. Elder" receive \$3,000.00 and interest, and the Master and members of the crew of the "George W. Elder" the sum of \$1,000.00 to be divided pro rata in proportion to the wages received by them.

It is further ordered that it be referred to United States Commissioner James P. Brown to ascertain and report the value of the cargo of the "San Pedro" when brought to the Port of Eureka and to ascertain and compute the proportionate amount of said \$4,000.00 to be

paid by said cargo, and also to ascertain and report the respective amounts due the Master and members of the crew of the "George W. Elder," and that he report the same to this Court with all convenient speed.

Dated January 7, 1909.

JOHN J. DE HAVEN, *Judge*.

Endorsed: Filed Jan. 7, 1909. Jas. P. Brown, Clerk By Francis Krull, Deputy Clerk.

20 In the District Court of the United States in and for the Northern District of California.

No. 13577.

CHARLES P. DOE et al., Libelants,
vs.

STEAMER "SAN PEDRO" and CARGO.

Report of United States Commissioner Jas. P. Brown, etc.

To the Honorable District Court of the United States for the Northern District of California:

Pursuant to the order of Court heretofore made, referring the above entitled matter to me as United States Commissioner, (a) to ascertain and report the value of the cargo of the "San Pedro," when brought to the port of Eureka, and (b) to ascertain and compute the proportionate amount of the sum of \$4,000.00, to be paid to Libelants, herein, by the said Steamer, and by the said cargo, and (c) to ascertain and report the respective amount due the Master and member- of the Crew of the "George W. Elder," and report the same with all convenient speed.

I, James P. Brown, United States Commissioner, do hereby report as follows:—

(1) That on March 5th, 1909, Proctor for Libelants, Proctors for said Vessel and Proctors for the Owners of the Cargo thereof, stipulated and agreed, as to the Crew list and monthly wages of the crew of the Steamer, "George W. Elder," on the 21st day of July, 1907, and further stipulated that the cargo on said Steamer "San Pedro," when she arrived at Eureka, after the collision, on the 22nd day of July, 1907, was of the value of \$2,394.44.

Pursuant to said stipulation, which is hereby attached, and made a part hereof, I do find that, the value of the cargo on said steamer, "San Pedro," when brought into the port of Eureka, was the sum of \$2,394.44.

21 (2) I do further find that the proportionate shares of the \$4,000.00, to be paid by the Steamer, "San Pedro," and by the cargo thereof, is as follows:—

Value of the Steamer	\$22,000.00	
The Steamer's share.....		\$3,607.38
Value of the Cargo.....	2,394.44	
The Cargo's share.....		392.62
		<hr/> 4,000.00

(3) I do further find that out of the \$1,000.00, awarded to the Master and the crew of the "George W. Elder," the respective amounts, to be divided pro rata among said Master and the Crew, as computed from the stipulated crew list and wage list, are as follows:—

Names.	Capacity.	Wage monthly.	Prop. share.
G. M. Jessen.....	Master	\$200.00	\$64.85
Thos. McTague.....	First Officer...	100.00	32.42
P. McClure.....	Second Officer.	85.00	27.55
C. Smith	Third Officer..	70.00	22.69
J. Haggard	Boatswain	55.00	17.83
G. Hansen	Carpenter	55.00	17.83
F. Brady	Quartermaster .	50.00	16.21
O. Bereton	"	50.00	16.21
G. Folvig	"	50.00	16.21
W. Miller.....	"	50.00	16.21
R. Curtis	Seaman	50.00	16.21
T. Gunther	"	50.00	16.21
A. Hendrickson.....	"	50.00	16.21
J. Grant	"	50.00	16.21
M. Johnson	"	50.00	16.21
J. Mullins.....	"	50.00	16.21
N. Egeness	"	50.00	16.21
C. Erickson	"	50.00	16.21
O. A. Adams.....	Deck Boy.....	25.00	8.10
C. C. Hoven.....	Watchman ...	50.00	16.21
22 J. S. Hughes.....	Chief Engineer	\$150.00	\$48.64
W. B. Coughlin....	First Assistant		
	Engineer ..	100.00	32.42
T. Russell.....	Second Assist- ant Engineer	85.00	27.55
G. Shatto	Third Assistant Engineer ..	70.00	22.68
J. Russell	Oiler	55.00	17.83
F. Elliott	Oiler	55.00	17.83
O. Anderson.....	"	55.00	17.83
T. Berliner.....	Fireman	55.00	17.83
A. Cares	"	55.00	17.83
J. Heyline.....	"	55.00	17.83
M. Miller.....	Wiper	45.00	14.58
F. Topia	"	45.00	14.58
B. Deguzee	"	45.00	14.58
W. M. Smith.....	Purser	90.00	29.18

J. J. Darrell.....	Steward	90.00	29.18
E. Canard.....	Second Steward	50.00	16.21
Mrs. D. Wood.....	Stewardess	30.00	9.72
Geo. Stevenson	Porter	50.00	16.21
E. Horryan	Messmen	40.00	12.96
A. Herstadt	Baker	75.00	24.31
E. Evans	Chief Cook....	75.00	24.31
W. Couplant.....	Second Cook .	60.00	19.45
C. Godfrey.....	Third Cook ...	45.00	14.58
G. Simmean.....	Pantryman ...	40.00	12.96
R. Cavanaugh.....	Second Pantry- man	30.00	9.72
G. Milwain	Waiter	30.00	9.72
H. Sedyard.....	"	30.00	9.72
R. Wyatt	"	30.00	9.72
T. Shepherd	"	30.00	9.72
T. McFarlan	"	30.00	9.72
C. Gross	Waiter	30.00	9.72
C. Patterson	"	30.00	9.72
T. Wershington.....	"	30.00	9.72
R. Ricketts.....	"	30.00	9.72
W. Clementson.....	"	30.00	9.72
Total		1,000.00	

- 23 All of which is respectfully submitted.
Dated: San Francisco, Calif., March 9th, 1909.

JAS. P. BROWN,
*United States Commissioner, Northern
District of California.*

- 24 In the District Court of the United States in and for the
Northern District of California. In Admiralty.

No. 13577.

CHARLES P. DOE et al., Libelants,
vs.
STEAMER "SAN PEDRO" and CARGO.

Whereas, in the above-entitled proceeding the Court has entered its decree, of which the annexed is a copy.

Now therefore, it is hereby stipulated and agreed on behalf of the Libelants and the owners of the Steamer "San Pedro" that the annexed crew list together with the monthly wage set opposite each name is true and correct list of the crew of the Steamer "George W. Elder" on the 21st day of July, 1907, together with the wage received by each of said crew, the same being the identical crew list as introduced by Libelants at the hearing of said cause.

And it is further stipulated and agreed on behalf of the owners of

the Steam Schooner "San Pedro" and the claimants of the cargo of Lumber on said Steam Schooner "San Pedro" when she arrived at Eureka after the collision on the 22nd day of July, 1907, that the value of said cargo was \$2394.44.

Dated, March 5th, 1909.

F. A. CUTLER,

Proctors for Libelants Charles P. Doe et al.

PAGE, McCUTCHEN & KNIGHT,

Proctors for the Metropolitan Redwood Lumber Company, Owners of the Steam Schooner "San Pedro."

PAGE, McCUTCHEN & KNIGHT,

Proctors for J. R. Hanify & Co., Claimants of the Cargo of Lumber at the Port of Eureka, July 22, 1907.

25 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13577.

CHARLES P. DOE et al., Libelants,

vs.

STEAMER "SAN PEDRO" and CARGO.

This cause having been heard on the pleadings and proofs and the Court, after due deliberation, having filed its findings of fact and conclusions of law herein,

It is ordered, adjudged and decreed that the value of the "San Pedro" when brought to the Port of Eureka in her disabled condition was \$22,000.00, and that the libelants recover the sum of \$4,000.00, with interest thereon from July 20th, 1907, as salvage service, and that said sum be paid pro rata by the Steamer "San Pedro" and her cargo in proportion to the value of each; and that of said sum the owners of the "George W. Elder" receive \$3,000.00 and interest, and the Master and members of the crew of the "George W. Elder" the sum of \$1,000.00 to be divided pro rata in proportion to the wages received by them.

It is further ordered that it be referred to United States Commissioner James P. Brown to ascertain and report the value of the cargo of the "San Pedro" when brought to the Port of Eureka and to ascertain and compute the proportionate amount of said \$4,000.00 to be paid by said cargo, and also to ascertain and report the respective amounts due the Master and members of the crew of the "George W. Elder," and that he report the same to this Court with all convenient speed.

JOHN J. DE HAVEN, *Judge.*

Dated January 7th, 1909.

26 *Crew of the Steamer "Geo. W. Elder" on July 21st, 1907,
Date of Taking Steam Schooner "San Pedro" in Tow.*

Names.	Capacity.	Wage monthly.
G. M. Jessen.....	Master	\$200.00
Thos. McTague	First Officer.....	100.00
P. McClure	Second Officer	85.00
C. Smith	Third Officer	70.00
J. Hasgard	Boatswain	55.00
G. Hansen	Carpenter	55.00
F. Brady	Quartermaster	50.00
O. Bereton	"	50.00
G. Folvig	"	50.00
W. Miller	"	50.00
R. Curtis	Seaman	50.00
T. Gunther	"	50.00
A. Hendrickson	"	50.00
J. Grant	"	50.00
M. Johnson	"	50.00
J. Mullins	"	50.00
N. Egeness	"	50.00
C. Erickson	"	50.00
O. A. Adams.....	Deck Boy	25.00
C. C. Hoven.....	Watchman	50.00
27 J. S. Hughes.....	Chief Engineer	\$150.00
W. B. Coughlin....	First Assistant Engineer	100.00
T. Russell	Second "	85.00
G. Shatto	Third "	70.00
J. Russell	Oiler	55.00
F. Elliott	Oiler	55.00
O. Anderson	"	55.00
T. Berliner	Fireman	55.00
A. Cares	"	55.00
J. Heyline	"	55.00
M. Miller	Wiper	45.00
F. Topia	"	45.00
B. Deguzee	"	45.00
W. M. Smith.....	Purser	90.00
J. J. Darrell.....	Steward	90.00
E. Canard	Second Steward	50.00
Mrs. D. Wood.....	Stewardess	30.00
Geo. Stevenson	Porter	50.00
E. Horryan.....	Messman	40.00
A. Herstadt	Baker	75.00
E. Evans	Chief Cook	75.00
W. Couplant	Second Cook	60.00
C. Godfrey	Third Cook	45.00
G. Simmean	Pantryman	40.00
R. Cavanaugh	Second Pantryman....	30.00

G. Milwain	Waiter	30.00
H. Sedyard	"	30.00
R. Wyatt	"	30.00
T. Shepherd	"	30.00
T. McFarlan	"	30.00
C. Gross	Waiter	30.00
C. Patterson	"	30.00
T. Wershington	"	30.00
R. Ricketts	"	30.00
W. Clementson	"	30.00

28 Presented and filed in open Court Mar. 26, 1909. Jas. P. Brown Clerk. By Francis Krull, Deputy Clerk.

29 In the District Court of the United States in and for the Northern District of California.

No. 13677. In Admiralty.

CHARLES P. DOE et al., Libelants,

vs.

STEAMER "SAN PEDRO" and CARGO, Respondents.

Exceptions to Report of Commissioner Jas. P. Brown as to Awarding Salvage.

Exceptions to Report of Commissioner Apportioning Salvage Award, Affidavit re Jurisdictional Facts, and Petition for Discontinuance of the Cause.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

William Denman, being first duly sworn, deposes and says:—

I.

That he is one of the proctors for the Metropolitan Redwood Lumber Company, claimant of the steam schooner "San Pedro."

II.

That the salvage services for which an award has been made were caused proximately by a disaster to the "San Pedro," is a collision between her and the steamer "Columbia," and that said fact is admitted by the libel on which the orders and decisions herein rest, and that the liability for said services is loss, damage and injury caused by said collision.

III.

That the said Metropolitan Redwood Lumber Company, claimant, has heretofore filed its petition in said court to limit its liability

for its loss, damage and injury by said collision, the proceeding being taken pursuant to Rules 54 and 57 of the Supreme Court of the United States. That said steam schooner "San Pedro" was within the said district at the time of filing said Petition and had not been libeled in any other district.

IV.

That thereafter, by its order in said limitation proceeding duly given and made, the said United States District Court did cause due appraisement to be had of the said steam schooner "San Pedro" by the United States Commissioner, James P. Brown, and that the said James P. Brown, as said Commissioner, did, pursuant to the said order of said Court, cause a hearing to be had on several days, at which hearing full evidence was by him received of the value of said vessel, the libelant herein appearing at said hearing and offering testimony therein. That thereafter the said Commissioner, in the said limitation proceeding, did find the said vessel to be valued at the sum of \$16,500, and did appraise her at said sum, and did report and return the said valuation and appraisement to said District Court, and thereafter the said District Court in said limitation proceeding did approve said report and valuation and appraisement by its order therein duly given and made.

V.

That thereafter the said court did make its order in said limitation proceedings, duly requiring the said Metropolitan Redwood Lumber Company to give a stipulation with sureties for the payment of said sum of \$16,500 and interest into said court whenever the same should be ordered. That thereafter and prior to the making and filing of the report of the Commissioner herein apportioning the salvage award, the said Metropolitan Redwood Lumber Company did give and file in said limitation proceeding its stipulation in the said sum, with sureties, and thereafter said court did approve of said stipulation and sureties.

VI.

That by virtue of said filing of said stipulation and of Section 4285 of the Revised Statutes, and the decision of the United States Supreme Court in *Providence & N. Y. S. S. Co. v. Hill Manufacturing Company*, 109 U. S. 578 at 599, this court lost jurisdiction of this libel of salvage against the said steam schooner "San Pedro."

Wherefore Metropolitan Redwood Lumber Company excepts to the report of the Commissioner in this cause apportioning the salvage award, on the ground that the said Commissioner was without jurisdiction to make or file the same.

And the said Metropolitan Redwood Lumber Company further moves and prays that the said United States District Court discontinue all further proceeding in this libel for salvage and take no

further action therein, the said petition being based on this affidavit and all papers on file herein and all evidence taken herein.

WILLIAM DENMAN.

Subscribed and sworn to before me this 29th day of March, A. D. 1909.

CEDA DE ZALDO,

*Notary Public in and for the City and County
of San Francisco, California.*

METROPOLITAN REDWOOD LUMEBR
COMPANY,

By PAGE, McCUTCHEN & KNIGHT,

By WILLIAM DENMAN,

Its Proctors.

A copy of the within exceptions to report of Commissioner etc., was left at the office of F. A. Cutler, Esquire, proctor for Libelant, at 9.20 a. m. this 29th day of March, 1909, by the undersigned.

WILLIAM B. ACTON.

Overruled May 20, 1909.

JOHN J. DE HAVEN, *Judge.*

Endorsed: Filed Mar. 29, 1909. Jas. P. Brown, Clerk By John Fougla, Deputy Clerk.

32 At a Stated Term of the District Court of the United States of America for the Northern District of California, Held at the Court Room Thereof, in the City and County of San Francisco, on Thursday the 20th Day of May, in the Year of Our Lord One Thousand Nine Hundred and Nine.

Present: The Honorable John J. De Haven, Judge.

No. 13677.

CHARLES P. DOE et al.

vs.

STR. "SAN PEDRO," etc.

Order of Court Overruling Exceptions to U. S. Commissioner's Report.

The exceptions to the report of United States Commissioner Jas. P. Brown, herein, apportioning a salvage award, having been heretofore submitted to the Court for decision, now after due consideration had thereon — by the court ordered that said exceptions be, and the same are hereby overruled, and that said report be, and the same is hereby confirmed.

33 In the District Court of the United States in and for the Northern District of California.

No. 13677.

CHARLES P. DOE et al., Libelants,
vs.
STEAMER "SAN PEDRO" and CARGO.

(*Final Decree.*)

The report of the Commissioner to whom it was referred to ascertain and report the value of the cargo of the "San Pedro" when brought to the Port of Eureka, and to ascertain and compute the proportionate amount of the salvage, heretofore awarded libelants, to be paid by said cargo and the Steamer "San Pedro," and also to ascertain and report the respective amounts due the Master and members of the crew of the Steamer "George W. Elder," having been filed herein, and exceptions to said report having been filed on the part of the claimant, and such exceptions having been overruled, now, on motion of F. A. Cutler, Esq., Proctors for Libelants, it is ordered that said report be and the same hereby is, in all respects, confirmed;

And it is further ordered, adjudged and decreed that the libelants recover of, and that the claimant, the said Metropolitan Redwood Lumber Company, pay to the libelants in this action, the following amounts, to-wit:

The sum of \$3,607.38, its proportionate share for salvage services, together with interest on said sum at the rate of 7% per annum from July 20th, 1907.

And it is further ordered, adjudged and decreed that libelants recover of, and that the Elk River Mill Lumber Company, owners of the cargo, pay to libelants the sum of \$392.62, its proportionate share for salvage services, together with interest thereon at the rate of 7% per annum from July 20th, 1907.

And it is further ordered, adjudged and decreed that the said sum of \$4,000.00 awarded for salvage services, be awarded as follows, to-wit:—

Charles P. Doe, owner of the Steamship "George W. Elder," the sum of \$3,000.00, with interest thereon at the rate of 7% per annum from July 20th, 1907; and to the crew of said Steamer "George W. Elder" the sum of \$1,000.00 in the proportions — follows, to-wit:—

Names.	Capacity.	Amount.
G. M. Jessen.....	Master	\$64.85
Thos. McTague	First Officer	32.42
P. McClure	Second Officer.....	27.55
C. Smith	Third Officer.....	22.69
J. Hasgard	Boatswain	17.83
G. Hansen	Carpenter	17.83

F. Brady	Quartermaster	16.21
O. Bereton	"	16.21
G. Folvig	"	16.21
W. Miller	"	16.21
R. Curtis	Seaman	16.21
T. Gunther	"	16.21
A. Hendrickson	"	16.21
J. Grant	"	16.21
M. Johnson	"	16.21
J. Mullins	"	16.21
N. Egeness	"	16.21
C. Erickson	"	16.21
O. A. Adams	Deck Boy	8.10
C. C. Hoven	Watchman	16.21
J. S. Hughes	Chief Engineer	48.64
35 W. B. Coughlin	First Assistant Engineer	32.42
T. Russell	Second " "	27.55
G. Shatto	Third " "	22.68
J. Russell	Oiler	17.83
F. Elliott	"	17.83
O. Anderson	"	17.83
T. Berliner	Fireman	17.83
A. Cares	"	17.83
J. Heyline	"	17.83
M. Miller	Wiper	14.58
F. Topia	"	14.58
B. Deguzee	"	14.58
W. M. Smith	Purser	29.18
J. J. Darrell	Steward	29.18
E. Canard	Second Steward	16.21
Mrs. D. Wood	Stewardess	9.72
Geo. Stevenson	Porter	16.21
E. Horryan	Messman	12.96
A. Herstadt	Baker	24.31
E. Evans	Chief Cook	24.31
W. Couplant	Second Cook	19.45
C. Codfrey	Third Cook	14.58
G. Simmean	Pantryman	12.96
R. Cavanaugh	Second Pantryman	9.72
G. Milwain	Waiter	9.72
H. Sedyard	"	9.72
R. Wyatt	"	9.72
T. Shepherd	"	9.72
T. McFarland	"	9.72
C. Gross	"	9.72
C. Patterson	"	9.72
T. Wershington	"	9.72
36 R. Ricketts	Waiter	9.72
W. Clementson	"	9.72

with interest on each amount at 7% per annum from July 20th, 1907.

And it is further ordered, adjudged and decreed that libelants have and recover their costs herein expended, taxed at \$—.

And it is further ordered, adjudged and decreed that libelants have execution hereon to satisfy this decree.

Dated: June 4th, 1909.

JOHN J. DE HAVEN, *Judge*.

Endorsed: Filed Jun- 4, 1909. Jas. P. Brown, Clerk, By Francis Krull, Deputy Clerk.

37 In the District Court of the United States in and for the Northern District of California.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder" et al.

vs.

STEAMER "SAN PEDRO."

Order Staying Execution of Judgment.

Upon motion of Messrs. Page McCutchen and Knight, and good cause appearing therefor, It Is therefore ordered that the execution of the judgment in the above entitled cause be and the same is hereby stayed to and including July 8th, 1909.

June 28th, 1909.

JOHN J. DE HAVEN, *Judge*.

Endorsed: Filed Jun- 28, 1909. Jas. P. Brown, Clerk By Francis Krull Deputy Clerk.

38 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and all Others Entitled, Libellants,

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Summons to Join in Appeal.

To Elk River Mill and Lumber Company, a corporation, owners of the cargo of the said steamer "San Pedro" and claimant; J. R. Hanify & Co., a corporation, its agent, in the above entitled proceeding:

You are hereby notified that Metropolitan Redwood Lumber Company, a corporation, claimant of the steamer "San Pedro" in the above entitled proceeding, will, upon Friday, the 9th day of July, 1909, at the hour of 10 o'clock A. M. or as soon thereafter as counsel may be heard, petition the above entitled court at the United States Post Office and Court House Building, situated at the northeast corner of Mission and Seventh streets, in the City and County of San Francisco, State of California, for the allowance of an appeal from the final decree rendered herein on the 4th day of June, 1909, by the above entitled court to the Supreme Court of the United States.

You are further notified to appear at said time and join in said application and petition, in case you desire to do so; in default whereof, you will be severed from the said Metropolitan Redwood Lumber Company, and said Metropolitan Redwood Lumber Company, will apply for permission to prosecute said appeal alone.

Dated July 8th, 1909.

PAGE, McCUTCHEN & KNIGHT,
WILLIAM DENMAN,
*Proctors for Claimant Metropolitan
Redwood Lumber Company.*

40 In the District Court of the United States in and for the Northern District of California. In Admiralty

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others, Entitled,

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Affidavit of Service of Summons to Join in Appeal and Petition Therefor.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

W. S. Burnett, being duly sworn, deposes and says:

That he is and was at all times herein mentioned, a male resident of the State of California, over the age of eighteen (18) years, and not a party to the above entitled action. That on the 9th day of July, 1909, at the City and County of San Francisco, affiant personally served the within summons to join in an appeal and the petition therefor, which is hereunto annexed and made a part hereof, on the Elk River Mill and Lumber Company, the claimant of the cargo of the steamer "San Pedro" in the above entitled proceeding, personally known to affiant to be such claimant, by then and there exhibiting to J. R. Hanify & Co., a corporation, agent for said claimant, and to John L. Reed, the Secretary of said J. R. Hanify & Co., the annexed original summons, and by then and there delivering to and leaving with said John L. Reed as aforesaid, a copy of said summons.

41

W. S. BURNETT.

Subscribed and sworn to before me, this 9th day of July, 1909.

[SEAL.]

JAS. P. BROWN, *Clerk,*
By FRANCIS KRULL,
Deputy Clerk U. S. District Court, Northern
District of California.

Endorsed: Filed Jul- 9, 1909. Jas. P. Brown, Clerk By Francis Krull Deputy Clerk.

42 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others Entitled, Libellants,

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Order of Severance.

The matter of the summons of Metropolitan Redwood Lumber Company, claimant of the steamer "San Pedro" in the above entitled proceeding, directed to Elk River Mill and Lumber Company, and J. R. Hanify & Co., a corporation, its agent, claimant of the said cargo of the said steamer "San Pedro," in the above entitled proceeding, in the matter of an appeal and petition therefor, upon the final decree in said proceeding from the above entitled court to the Supreme Court of the United States, coming on regularly to be heard at this time, due proof having been made to the satisfaction of the court that summons had been seasonably served upon the said Elk River Mill and Lumber Company to appear and join in said writ of error, or be severed from said Metropolitan Redwood Lumber Company, and the said Elk River Mill and Lumber Company not having appeared in response to said summons, and it having been proved to the satisfaction of the court that said Elk

43 River Mill and Lumber Company does not desire to prosecute an appeal or petition therefor from the said decree, and that it is willing to be severed from the said Metropolitan Redwood Lumber Company:

Now, therefore, it is ordered that the said Elk River Mill and Lumber Company be and it is hereby severed from the said Metropolitan Redwood Lumber Company, and said company last mentioned is hereby given permission to prosecute said appeal and petition therefor, alone.

Done in open court this 9th day of July, 1909.

WM. C. VAN FLEET, *Judge.*

Endorsed: Filed Jul- 9, 1909. Jas. P. Brown Clerk By Francis Krull Deputy Clerk.

44 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others Entitled, Libellants,

VS.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Petition for Appeal to the Supreme Court of the United States.

To the Honorable District Court of the United States in and for the Northern District of California:

Metropolitan Redwood Lumber Company, a corporation, claimant of the said steamer "San Pedro," having severed itself from claimant Elk River Mill and Lumber Company, and feeling itself aggrieved by the decree made and entered in this cause on the 4th day of June 1909, does hereby appeal from said decree of said District Court to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors which is filed herewith; and it prays that this appeal may be allowed and that a citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States.

And your petitioner further prays that a proper order be made touching the security to be required of it to perfect its appeal and to stay execution pending said appeal, and that a supersedeas and stay of execution be granted pending said appeal.

Dated July 9, 1909.

PAGE, McCUTCHEN & KNIGHT,
WILLIAM DENMAN,

Proctors for Claimant Metropolitan Redwood Lumber Co.

45 *Order Allowing Appeal and Staying Execution.*

The above entitled petition is hereby granted and the appeal therein mentioned is allowed upon claimant, Metropolitan Redwood Lumber Company, giving a bond conditioned as required by law, in the sum of Six thousand five hundred (\$6500) dollars to be approved by this Court.

Dated July 9th, 1909.

WM. C. VAN FLEET,
*Judge of the U. S. District Court,
Northern District of California.*

Endorsed: Filed Jul- 9, 1909. Jas. P. Brown, Clerk By Francis Krull, Deputy Clerk.

46 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others Entitled, Libellants,

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Assignment of Errors.

Assignment of Errors on Appeal from the U. S. District Court in and for the Northern District of California to the Supreme Court of the United States.

Metropolitan Redwood Lumber Company, a corporation, the claimant of the steamer "San Pedro," — filed herewith its petition praying an appeal from the final decree of this Court to the Supreme Court of the United States, the said final decree of this Court having been made and entered on the 4th day of June, 1909, in favor of libellant- and against said claimant, now assigns as errors in the said decree and the rulings of the court therein, the following:

Assignment of Errors.

First. That the said United States District Court erred in rendering the decree herein of date June 4, 1909, against the said steamship "San Pedro," a schooner owned by said Metropolitan Redwood Lumber Company, for damages arising from the collision of the said "San Pedro," and the "Columbia," being the damages
47 prayed for in the libel herein, when there was pending in the said court a separate proceeding brought by said Metropolitan Redwood Lumber Company, as such owner, for limitation of liability for such damages, in which proceeding the last named due appraisal had been had under Rule 54 of the Supreme Court, and a stipulation given and filed, as required by the order of said District Court and said Rule 54, at the time of the entry of said decree herein on June 4, 1909.

All of which is respectfully submitted.

PAGE, McCUTCHEN & KNIGHT,
WILLIAM DENMAN,
*Proctors for Claimant Metropolitan
Redwood Lumber Company.*

Endorsed: Filed Jul- 9, 1909. Jas. P. Brown Clerk By Francis Krull Deputy Clerk.

48 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others Entitled, Libellants,

VS.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Certificate (of Judge Van Fleet as to Allowance of Appeal).

To the Honorable the Supreme Court of the United States:

I, the undersigned Judge, hereby certify that in the foregoing entitled proceeding, Metropolitan Redwood Lumber Company, a corporation, claimant and owner of the steamer "San Pedro," objected to the jurisdiction of the United States District Court, in and for the Northern District of California, by exceptions to the Commissioner's report duly filed therein, which said exceptions were filed therein on the 29th day of March, 1909, and that the said objection and exceptions were overruled by the court and in due time a decree rendered by the court in favor of libellant- and against the said claimant, Metropolitan Redwood Lumber Company, and the Elk River Mill and Lumber Company, the claimant of the cargo of said steamer.

I further certify that the said claimant of said cargo has been duly and regularly severed from said claimant Metropolitan Redwood Lumber Company.

49 And the claimant, Metropolitan Redwood Lumber Company, having prayed for an order allowing an appeal from said decree and that the matters involved in the said exceptions may be heard by the Supreme Court of the United States, I hereby further certify that the only question to be decided upon and under the said appeal by the said Supreme Court, is:

Whether the said United States District Court erred in rendering the decree herein of date June 4, 1909, against the said steamship "San Pedro," a schooner owned by said Metropolitan Redwood Lumber Company, for damages arising from the collision of the said "San Pedro" and the "Columbia," being the damages prayed for in the libel herein, when there was pending in the said court a separate proceeding brought by said Metropolitan Redwood Lumber Company, as such owner, for limitation of liability for such damages, in which proceeding last named due appraisalment had been had under Rule 54 of the Supreme Court, and a stipulation given and filed, as required by the order of said District Court and said Rule 54, at the time of the entry of said decree herein on June 4, 1909.

All of which is respectfully submitted.

Dated July 9th, 1909.

WM. C. VAN FLEET, *Judge.*

Endorsed: Filed Jul- 9, 1909. Jas. P. Brown Clerk By Francis Krull Deputy Clerk.

50 In the District Court of the United States in and for the Northern District of California. In Admiralty.

No. 13677.

CHARLES P. DOE, Owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, Master of the said Steamer, for Themselves and All Others Entitled, Libellants,

vs.

STEAMER "SAN PEDRO," HER ENGINES, BOILERS, MACHINERY, TACKLE, APPAREL, FURNITURE, BOATS, and CARGO.

Order Staying Execution.

Whereas, on the 9th day of July, 1909, the above entitled court made its order granting the petition of Metropolitan Redwood Lumber Company for an appeal to the Supreme Court of the United States upon the giving of a bond conditioned as required by law, in the sum of six thousand five hundred (6,500) dollars to be approved by this court, and

Whereas, such bond has been approved by this court, and filed.

Now, therefore, it is hereby ordered that pending the determination of said appeal execution against the said Metropolitan Redwood Lumber Company be, and the same is hereby stayed.

Dated July 12, 1909.

WM. C. VAN FLEET,
*Judge of the United States District Court,
Northern District of California.*

Endorsed: Filed Jul- 12, 1909. Jas. P. Brown Clerk By Francis Krull Deputy Clerk.

51 *(Citation.)*

UNITED STATES OF AMERICA, ss:

To Charles P. Doe, owner of the American Steamer "George W. Elder," of Portland, Oregon, and G. M. Jessen, master of the said steamer, for themselves and all others entitled, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, in the District of Columbia, on the 9th day of September, A. D. 1909

pursuant to an order allowing appeal filed in the Clerk's office of the United States District Court, for the Northern District of California, wherein Metropolitan Redwood Lumber Company, a corporation, is appellant and you are appellees, to show cause, if any there be, why the judgment and decree in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William C. Van Fleet, Judge of the United States District Court, in and for the Northern District of California, this 12th day of July, 1909, and of the Independence of the United States, the one hundred and thirty-fourth.

WM. C. VAN FLEET,
District Judge.

Attest:

[SEAL.] JAS. P. BROWN, *Clerk*,
By FRANCIS KRULL,
Deputy Clerk.

Receipt of copy of within Citation is hereby admitted this 15th day of July, 1909.

F. A. CUTLER,
F. R. SWEASEY,
Proctors for Libelants.

Endorsed: Filed Jul- 28, 1909. Jas. P. Brown — by M. Thomas Scott, Deputy Clerk.

52 *Certificate of Clerk U. S. District Court as to Transcript.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing and hereunto annexed fifty-one pages, numbered from 1 to 51 inclusive, contain a full and true transcript of the record in said District Court, made up pursuant to instructions of Messrs. Page McCutchen and Knight, Proctors for Appellants, embodied in said Transcript, under the head of "Præcipe for Record," in the cause entitled, Charles P. Doe, Owner of the Steamer "George W. Elder," etc., et al., vs. Steamer "San Pedro," her engines, boilers, machinery, etc., and cargo, No. 13,677.

I further certify that the cost of preparing and certifying the foregoing Transcript on Appeal is the sum of Twenty-five and 90-100 Dollars, (\$25.90), and that the same has been paid to me by Proctors for Appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 8th, day of November, A. D. 1909,

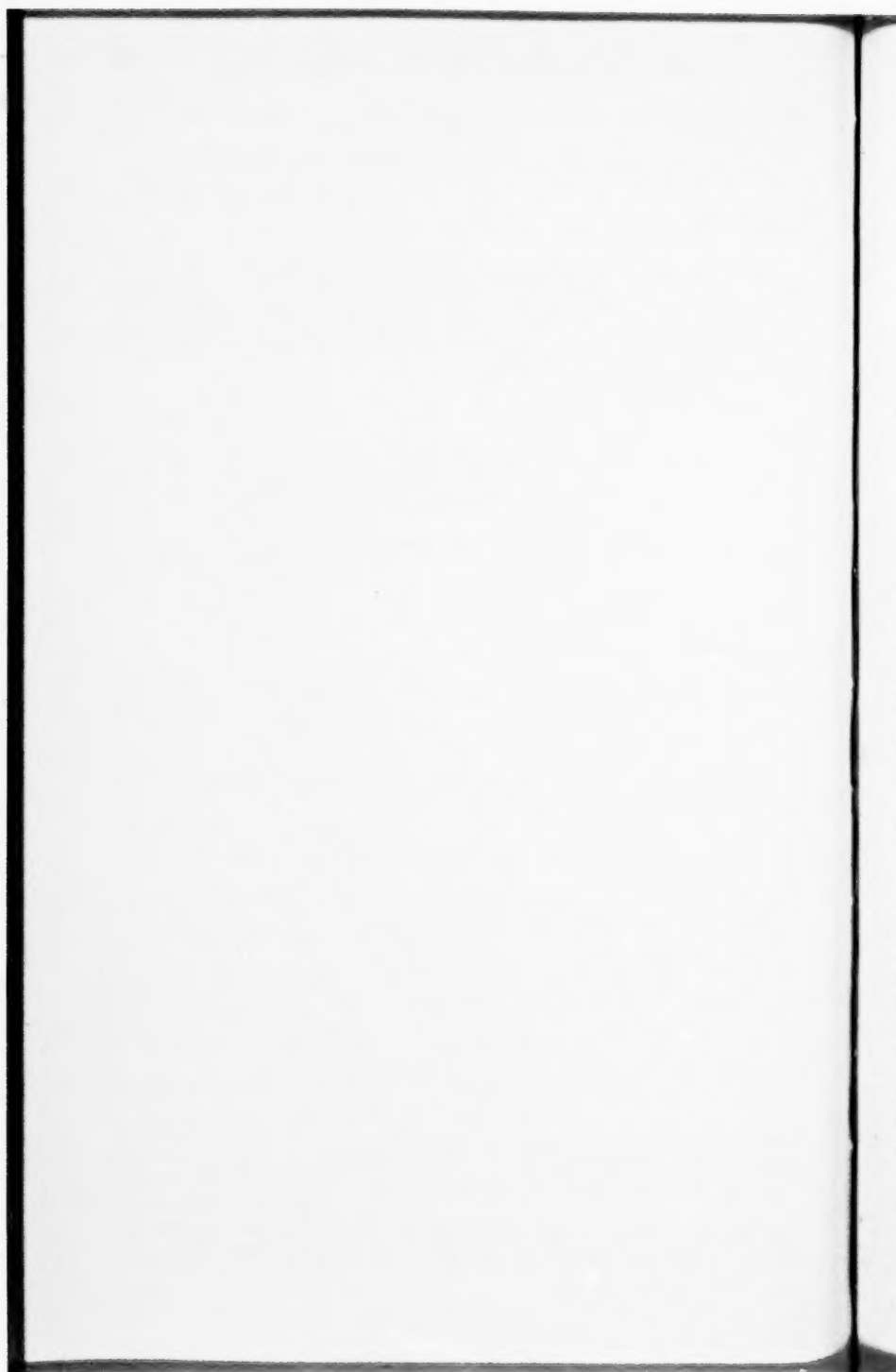
and of the Independence of the United States the One Hundred and Thirty-fourth.

[Seal of the U. S. District Court, Northern Dist. of California.]

JAS. P. BROWN, *Clerk.*

E. S. M.

Endorsed on cover: File No. 21,898. N. California D. C. U. S. Term No. 155. Metropolitan Redwood Lumber Company, claimant of the steamer "San Pedro," appellant, vs. Charles P. Doe, owner of the American steamer "George W. Elder," et al. Filed November 16th, 1909. File No. 21,898.



IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 155.

METROPOLITAN REDWOOD LUMBER COMPANY, a Corporation, Claimant of the Steam Schooner "San Pedro," Appellant,

vs.

CHARLES P. DOE, Owner of the American Steam Schooner "George W. Elder," and G. M. JESSEN, Master of the Said Steamer, Themselves and All Others Entitled, Libellants and Appellees.

Whereas, the sole question upon this appeal is as certified to by the District Judge,

"Whether the said U. S. District Court erred in rendering the decree herein, of date June 4, 1909, against the said Steamship 'San Pedro,' a schooner owned by said Metropolitan Redwood Lumber Co. for damages arising from the collision of the said 'San Pedro,' and the 'Columbia,' being the damages prayed for on the libel herein, when there was pending in the said court a separate proceeding brought by said Metropolitan Redwood Lumber Company, as such owner, for limitation of liability for such damages, in which proceeding last named the appraisalment had been under Rule 54 of the Supreme Court, and a stipulation given and filed, as required by the order of said District Court, and said Rule 54, at the time of the entry of said decree herein on June 4, 1909.

WM. C. VAN FLEET, *Judge.*"

And whereas, the stipulation given and filed in the limitation of liability proceedings aforesaid was in the sum of \$16,500.00 which said sum was arrived at by the Commissioner to whom said matter was referred for appraisalment, by deducting from the value of said vessel at the port of Eureka, the port of safety to which she was taken by virtue of appellee's salvage services, the value of such salvage services together with the risks and hazards incident to such vessel's condition; and,

Whereas, although libellants and appellees deem the same germane to the present appeal, no portion of the record of said limitation of liability proceedings referred to in the above certificate has yet been included in the record on this appeal; said omission being caused by appellant for the reason that it deemed said matters irrelevant to the sole question involved in the appeal above stated save in so far as they show the pendency of the limitation proceedings referred to in said question and the filing of the stipulation therein, and

Whereas, a certain minute order dated May 27, 1908, and here-

inafter set forth, made and entered in this separate salvage proceedings, has also been omitted from the record on this appeal;

Now, therefore, it is hereby stipulated and agreed by and between the parties hereto that upon the hearing of the present appeal this court may consider the following as part of and shown by the record on appeal in this separate salvage proceeding with the same force and effect for all purposes as though the same were incorporated in and originally made a part of the printed record herein:

Statement made by William Denman Esq., Proctor for Metropolitan Redwood Lumber Company, appellant here and petitioner there, at the taking of depositions at hearing on appraisement before Commisisoner Jas. P. Brown in said limitation of liability proceeding wherein said Commissioner rendered the following report, which said statement was as follows:

"The Statute requires, before the monition shall be issued that
 "the Commissioner shall make due appraisement of the vessel at
 "the termination of her voyage; her value as she lies in the Pacific
 "is determined by several elements; the method pursued by the
 "Courts is to determine the value of the vessel when she reaches a
 "safe harbor, deducting therefrom the cost of getting her there and
 "also the risk of getting there; and in order to determine the value
 "of the vessel as she lies wrecked in the ocean, that appears to be the
 "only way in which that valuation can be determined.

"Her value as she lies in the ocean consists of what her value is
 "as she lies in a safe port, less the cost of getting her there, less the
 "risk of getting her there. In this case we desire to show all those
 "elements in order to show her value."

Report of Commissioner as follows:

In the District Court of the United States for the Northern District
 of California.

No. 13676.

In the Matter of the Application of the METROPOLITAN REDWOOD
 LUMBER COMPANY for Limitation of Liability.

To the District Court of the United States, Northern District of
 California:

In obedience to the order of the Court made and entered on the 27th day of May, 1908, referring the above entitled matter to me to ascertain from the evidence taken in this proceeding, and from such further testimony as the parties might desire to offer, the value of the Steam Schooner "San Pedro" immediately after her collision with the steamer "Columbia" and the value of the freight pending at the time of such collision, and report the same to the court within five days from the date of such order,

I, James P. Brown, United States Commissioner, do hereby respectfully report as follows:

That on the 29th day of May, 1908, I was attended by Messrs. Charles Page, Nathan Frank, William Denman, proctors herein. That no additional witnesses or further testimony was produced. After a careful consideration of the testimony heretofore taken and hereto attached, I do find as follows:—

I find:

1. That the value of the "San Pedro" immediately prior to the collision with the "Columbia" was the sum of \$42,000.
2. That the estimated cost of restoring and repairing the damages to the said "San Pedro," caused by said collision, is \$20,000.
3. That the value of said vessel when brought to the port of Eureka in her disabled condition was \$22,000.
4. That a fair estimate of the expenses and cost of taking the "San Pedro" to the port of Eureka, together with a reasonable sum on account of the risks and hazards to which the vessel was subject immediately after the collision affecting her then value; and such as, under the conditions existing at that time, it would have been reasonable to suppose might attend the work of salving her and so affect her value, I find to be \$5,500.00.
5. Deducting said estimated cost and expense of taking the vessel into the port of Eureka and the risks and hazards above mentioned, from the value of said vessel in her disabled condition at the port of Eureka, I find that the value of said vessel immediately following said collision was \$16,500.
6. I find there was no freight pending.
All of which is respectfully submitted.

Dated June 1st, 1908.

JAS. P. BROWN,
*United States Commissioner for the
Northern District of California.*

Presented and filed in open court, June 3, 1908.

JAS. P. BROWN, *Clerk,*
By FRANCES KRULL,
Deputy Clerk.

That thereafter exceptions were duly filed by various claimants in the said limitation proceeding to the said order appraising the said vessel and her freight then pending, and thereafter the said District Court in the said limitation proceeding, after proper hearing, did overrule the said objection and confirm the said report and did order a stipulation to be filed therein by said Metropolitan Redwood Lumber Company, pursuant to Rule 54 of the Admiralty Rules of this Court, in the sum of Sixteen Thousand Five Hundred Dollars (\$16,500); and that thereafter due notice having been given as required by the Rules of this Court, various claimants appeared in the said limitation proceedings and filed their claims therein and thereafter a decree, limiting the liability of the Metropolitan Redwood Lumber Company to the sum of Sixteen Thousand Five Hundred Dollars (\$16,500), with interest, was duly entered in said limitation proceedings.

Minute Order as follows:

In the District Court of the United States for the Northern District of California.

No. 13676.

In the Matter of the Application of METROPOLITAN REDWOOD LUMBER COMPANY, a Corporation, Owner of the Steam Schooner "San Pedro," for Limitation of Liability.

Upon consideration of the motion of F. A. Cutler, proctor for libellant, in the action of Charles P. Doe, et al., libellants v. Steamer "San Pedro," No. 13,677, pending in this Court for a modification of the restraining order issued herein on August 1st, 1907, so as to permit the libellants in the said action of Chas. P. Doe et al. Libellants vs. Steamer "San Pedro," to proceed with the trial of said action and to fix a date for the trial of same,

It is now by the court ordered that said motion be and the same is hereby granted.

Dated May 27th, 1908.

JOHN J. DE HAVEN, *Judge.*

Filed May 27, 1908.

JAS. P. BROWN, *Clerk,*
By FRANCES KRULL,
Deputy Clerk.

Minute Order as follows:

In the District Court of the United States for the Northern District of California.

No. 13677.

CHARLES P. DOE et al., Libellants,
vs.
THE STEAMER "SAN PEDRO."

The Order heretofore made in the matter of the application of the Metropolitan Redwood Lumber Company, owners of the Steam Schooner "San Pedro" for Limitation of Liability, No. 13,676, restraining the prosecution of the above entitled action, having been this day vacated,

It is now by the court ordered that the said action of Charles P. Doe et al., Libellants vs. Steamer "San Pedro," be set for trial, in this Court, on June 19, 1908, at 10 o'clock.

Dated: May 27th, 1908.

JOHN J. DE HAVEN, *Judge.*

Filed May 27th, 1908.

JAS. P. BROWN, *Clerk*,
By FRANCES KRULL,
Deputy Clerk.

Stipulation dated San Francisco, October 31st, 1911.

PAGE, McCUTCHEN & KNIGHT,
WILLIAM DENMAN,
Prosecutors for Charles P. Doe et als.,
Lumber Company, Appellant;
F. A. CUTLER,
F. R. SWEASEY,
Proctors for Charles P. Doe et als.,
Libellants and Appellees.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,
Of Counsel for Appellees.

[Endorsed:] In the Supreme Court of the United States. Metropolitan Redwood Lumber Company, a corporation, etc., Appellant, vs. Charles P. Doe, etc., Libellants and Appellees. Stipulation. J. N. Gillett, F. A. Cutler, & F. R. Sweasey, Attorneys at Law, 506-507 Crocker Building, San Francisco, Cal.

[Endorsed:] File No. 21,898. Supreme Court U. S. October Term, 1911. Term No. 155. Metropolitan Redwood Lumber Co., Claimant, etc., App't, vs. Charles P. Doe, Owner, etc., et al. Stipulation of counsel and addition to record. Filed November 10, 1911.



15

Office Supreme Court U. S.

FILED

OCT 27 1911

JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 155.

**METROPOLITAN REDWOOD LUMBER
COMPANY, A CORPORATION, CLAIMANT OF
THE STEAM SCHOONER "SAN PEDRO," Appel-
lant,**

vs.

**CHARLES P. DOE, OWNER OF THE AMERICAN
STEAM SCHOONER "GEORGE W. ELDER," AND
G. M. JESSEN, MASTER OF THE SAID STEAMER,
THEMSELVES AND ALL OTHERS ENTITLED, Libel-
lants and Appellees.**

**NOTICE OF MOTION AND MOTION FOR WRIT
OF CERTIORARI, ETC.**

**J. N. GILLETT,
F. A. CUTLER,
F. R. SWEASEY,**

Proctors for Libellants and Appellees.

**ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,**

Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 155.

METROPOLITAN REDWOOD LUMBER
COMPANY, A CORPORATION, CLAIMANT OF
THE STEAM SCHOONER "SAN PEDRO," *Appel-*
lant,

vs.

CHARLES P. DOE, OWNER OF THE AMERICAN
STEAM SCHOONER "GEORGE W. ELDER," AND
G. M. JESSEN, MASTER OF THE SAID STEAMER,
THEMSELVES AND ALL OTHERS ENTITLED, *Libel-*
lants and Appellees.

Appellant is hereby notified that the appellees will, on Monday, the 30th day of October, 1911, upon their verified petition and a copy of the entire record in this cause, at the opening of the court on that day or as soon thereafter as counsel can be heard, submit a motion (a copy of which motion and of the verified petition for writ of cer-

tiorari are herewith delivered to you) to the Supreme Court of the United States, in its court room at the Capitol in the city of Washington, D. C.

Dated this 28th day of September, 1911.

J. N. GILLETT,
F. A. CUTLER,
F. R. SWEASEY,

Proctors for Appellees and Petitioner.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,

Of Counsel.

The foregoing notice is hereby accepted and delivery of a copy thereof and of the petition for writ of certiorari is hereby acknowledged this 30th day of September, 1911.

No copy of proposed record has been served.

WILLIAM DENMAN,

Proctor for Appellant.

[Endorsed:] In the Supreme Court of the United States. Metropolitan Redwood Lumber Company, a corporation, etc., appellant, *vs.* Charles P. Doe, etc., libellants and appellees. notice of motion. J. N. Gillett, F. A. Cutler, and F. R. Sweasey, attorneys at law, 506-507 Crocker Building, San Francisco, Cal.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 155.

METROPOLITAN REDWOOD LUMBER
COMPANY, A CORPORATION, CLAIMANT OF
THE STEAM SCHOONER "SAN PEDRO," *Appel-*
lant,

vs.

CHARLES P. DOE, OWNER OF THE AMERICAN
STEAM SCHOONER "GEORGE W. ELDER," AND
G. M. JESSEN, MASTER OF THE SAID STEAMER,
THEMSELVES AND ALL OTHERS ENTITLED, *Libel-*
lants and Appellees.

Come now libellants and appellees above named
by their counsel and move this honorable court
that it shall by certiorari or other proper process
directed to the honorable the judge of the United
States District Court in and for the Northern Dis-
trict of California require said court to certify
and send to this court on a date certain, to be

therein designated, that certain portion of the record of said district court in this salvage proceeding, omitted from the record on this appeal, consisting of a minute order dated May 27, 1908, made and entered by said United States District Court in this present salvage proceeding, directing the continuance of such salvage proceedings.

Also that certain portion of the record of a proceeding, No. 13,676 in said District Court, entitled "In the Matter of the Application of the Metropolitan Redwood Lumber Company for Limitation of Liability," as follows: Report of the commissioner, James P. Brown, on reference to appraise value of steamer "San Pedro," filed therein March 9, 1908, together with transcript of the testimony of A. F. Pillsbury, G. M. Jessen, J. R. Hanify, James Tyson, C. A. Thayer, T. M. Fenwick, J. R. Cristy, R. C. Taberett, Edward Jahnsen, W. C. Tibbitts, M. Hanson, and A. V. Williams, taken on such reference, consisting of 168 pages, and filed therein February 12, 1908.

Also the further report of James P. Brown, United States Commissioner, on appraisal of said steamer "San Pedro," dated June 1, 1908, and filed in said proceedings June 3, 1908.

Also minute order dated May 27, 1908, made and entered by United States District Court in said limitation of liability proceedings aforesaid, modifying the restraining order theretofore issued in said proceedings.

And to that end it now tenders herewith its verified petition.

J. N. GILLETT,
F. A. CUTLER,
F. R. SWEASEY,

Proctors for Libellants and Appellees.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,

Of Counsel.

[Endorsed:] In the Supreme Court of the United States. Metropolitan Redwood Lumber Company, a corporation, etc., appellant, *vs.* Charles P. Doe, etc., libellants and appellees. Motion for writ of certiorari. J. N. Gillett, F. A. Cutler, and F. R. Sweasey, attorneys at law, 506-507 Crocker Building, San Francisco, Cal.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 155.

METROPOLITAN REDWOOD LUMBER
COMPANY, A CORPORATION, CLAIMANT OF
THE STEAM SCHOONER "SAN PEDRO," *Appel-*
lant,

vs.

CHARLES P. DOE, OWNER OF THE AMERICAN
STEAM SCHOONER "GEORGE W. ELDER," AND
G. M. JESSEN, MASTER OF THE SAID STEAMER,
THEMSELVES AND ALL OTHERS ENTITLED, *Libel-*
lants and Appellees.

*To the Honorable Chief Justice and Associate
Justices of the Supreme Court of the United
States:*

The petition of Charles P. Doe, libellant and ap-
pellee above named, respectfully represents as
follows:

This proceeding in the district court was one *in rem* for the value of salvage services performed by appellees in the salving of the steam schooner "San Pedro" and cargo.

During the progress of such cause contention was made by appellant that by reason of the subsequent filing of a stipulation for value in separate limitation of liability proceedings that the district court thereby immediately lost jurisdiction to further proceed with this independent salvage proceeding or to enter any decree herein.

The sole question upon this appeal therefore is as certified to by the district judge:

"Whether the said U. S. District Court erred in rendering the decree herein, of date June 4, 1909, against the said steamship 'San Pedro,' a schooner owned by said Metropolitan Redwood Lumber Co., for damages arising from the collision of the said 'San Pedro' and the 'Columbia,' being the damages prayed for in the libel herein, when there was pending in the said court a separate proceeding brought by said Metropolitan Redwood Lumber Company, as such owner, for limitation of liability for such damage, in which proceeding last named the appraisement had been under Rule 54 of the Supreme Court, and a stipulation given and filed, as required by the order of said district court, and said Rule 54, at the time of the entry of said decree herein, on June 4, 1909.

"WM. C. VAN FLEET, Judge."

The appraisement of the value of the vessel mentioned in the foregoing certificate of the district judge, as well as the proceedings before the commissioner in taking testimony on such appraisement as to the value of the salvage services, was expressly referred to in the petition for discontinuance of this separate salvage suit filed herein on behalf of appellants, and was in a great measure determinative of the decision reached by the district court upon such motion to dismiss.

This appraisement by the commissioner, furnishing as it did the valuation in which the stipulation in said limitation of liability proceedings was written, is considered by petitioner herein as most germane to the present appeal, which appeal involves solely the question as to the matter of jurisdiction of the district court by reason of the existence of such stipulation. It at least most clearly manifests the inconsistent position assumed in the present proceeding by Wm. Denman, Esq., proctor for appellant, as compared with that assumed by him at the limitation of liability proceedings, in which matter he also represented the Metropolitan Redwood Lumber Company as petitioner therein.

Mr. Denman, at the taking of the deposition of C. M. Jessen on appraisement proceedings, taken before the commissioner in said limitation of liability proceedings, there stated:

“The statute requires, before the moni-
 “tion shall be issued that the commissioner
 “shall make due appraisement of the ves-
 “sel at the termination of her voyage; her
 “value as she lies in the Pacific is deter-
 “mined by several elements; the method
 “pursued by the courts is to determine the
 “value of the vessel when she reaches a safe
 “harbor, deducting therefrom the cost of
 “getting her there and also the risk of get-
 “ting there; and in order to determine the
 “value of the vessel as she lies wrecked in
 “the ocean, that appears to be the only way
 “in which that valuation can be deter-
 “mined.”

“Her value as she lies in the ocean con-
 sists of what her value is as she lies in a
 safe port, *less the cost of getting her there,*
 less the risk of getting her there. In this
 case we desire to show all those elements in
 order to show her value.”

The subsequent report of the commissioner con-
 taining his appraisement, a copy of which is
 hereto annexed marked Exhibit “A,” clearly and
 unquestionably shows the appraisement of said
 vessel at the sum of \$16,500 to have been made by
 said commissioner in said limitation of liability
 proceedings exactly as directed by Mr. Denman,
 proctor for appellant herein, viz: by deducting
 from the value of said vessel at the port of Eureka,
 the port of safety to which she was taken by virtue
 of appellee’s salvage services, the value of such
 salvage services together with the risks and
 hazards incident to such vessel’s condition.

The report of the commissioner aforesaid as well as the proceedings upon taking testimony as to value upon which such report was founded, clearly shows no provision to have been made in such limitation of liability proceedings for the payment of the salvage services here involved. To the contrary, the omitted record conclusively establishes the fact that at the suggestion of Mr. Denman (proctor for Metropolitan Redwood Lumber Company, petitioner there and appellant here), the commissioner, in thus determining the amount for which the stipulation for value should be written, actually deducted from the salvaged value of the vessel the amount of the salvage services performed by these appellees.

In view of the premises, it is suggested that this endeavor upon the part of appellant to force appellees into this limitation of liability proceedings, there to prorate their claim under this deficient stipulation with those creditors who have already filed their claims therein, should be frowned upon by this court, not only on account of the injustice ensuing to these appellees, but for the additional reason that it would greatly impair the rights of the creditors who have already filed claims in such limitation of liability proceedings.

To the end, therefore, that this appellant shall not thereby become enriched to the extent of the value of these salvage services, at the expense of these appellees and all those having filed claims in

such limitation of liability proceedings, we deem that this court should have before it, as did the trial court, such portions of the record in the proceedings No. 13,676 (before the United States District Court in and for the Northern District of California, entitled "In the Matter of the Application of the Metropolitan Redwood Lumber Company for Limitation of Liability"), as discloses the method pursued by the commissioner in appraising such vessel at the sum of \$16,500, as well as appellant's participation therein. That such portion of the record includes the report of the Commissioner James P. Brown on reference to appraise value of steamer "San Pedro" filed therein March 9, 1908, together with the transcript of testimony of A. F. Pillsbury, G. M. Jessen, J. R. Hanify, James Tyson, C. A. Thayer, T. M. Fenwick, J. R. Christy, H. C. Taberett, Edward Jahnson, W. G. Tibbitts, M. Hanson, and A. V. Williams, taken on such reference and filed therein February 12, 1908; also the further report of James P. Brown, United States Commissioner, on appraisal of said vessel "San Pedro" dated June 1, 1908, and filed in said proceedings June 3, 1908.

That prior to the filing of the commissioner's report ascertaining the value of said vessel in said limitation of liability proceedings, to wit: May 27, 1908, a minute order was made and entered in said limitation of liability proceedings modifying the

restraining order theretofore issued in said proceedings so as to permit the libellant in said salvage proceedings to proceed with the trial of said salvage action, a copy of which minute order in said limitation of liability proceedings is hereto annexed marked Exhibit "B" and made a part hereof; that said minute order, although considered by the district court at the trial of said salvage suit, has been entirely omitted from the record on this appeal.

That on said May 27, 1908, a minute order was also made and entered in the salvage suit from which this appeal is taken, reciting the vacation of the restraining order by the minute order in said limitation of liability proceedings aforesaid and directing the continuance of said salvage proceeding; that a copy of said minute order in said salvage suit is hereto annexed marked Exhibit "C" and made a part hereof; that said minute order although part of the records of said district court in said salvage suit and considered by said district court at the trial of said action, has been entirely omitted from the record on this appeal.

Wherefore, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this court, directed to the United States District Court in and for the Northern District of California commanding said court to certify and send to this court, on a day certain to

be therein designated, that certain portion of the record of a proceeding No. 13,676 in said district court entitled "In the Matter of the Application of the Metropolitan Redwood Lumber Company for Limitation of Liability," as follows:

Report of the commissioner, James P. Brown, on reference to appraise value of steamer "San Pedro," filed therein March 9, 1908, together with transcript of the testimony of A. F. Pillsbury, G. M. Jessen, J. R. Hanify, James Tyson, C. A. Thayer, T. M. Fenwick, J. R. Christy, H. C. Taberett, Edward Jahnsen, W. C. Tibbitts, M. Hanson, and A. V. Williams, taken on such reference, consisting of 168 pages and filed therein Feb. 12, 1908.

Also the further report of James P. Brown, United States Commissioner, on appraisal of said steamer "San Pedro," dated June 1, 1908, and filed in said proceedings June 3, 1908.

Also minute order dated May 27, 1908, made and entered by United States District Court in said limitation of liability proceedings aforesaid, modifying the restraining order theretofore issued in said proceedings.

Also minute order dated May 27, 1908, made and entered by the United States District Court in this present salvage proceedings, directing the continuance of such salvage proceedings. And that your petitioner may have such other or further relief or remedy in the premises as to this

court may seem just and your petitioner will ever pray.

J. N. GILLET,
F. A. CUTLER,
F. R. SWEASEY,
Proctors for Petitioner.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,
Of Counsel.

STATE OF CALIFORNIA,
Northern District of California, ss:

Charles P. Doe, being duly sworn, says:

I am the petitioner named in the foregoing petition and am one of the appellees in the above-entitled proceedings. I have read the foregoing petition and the same is true of my own knowledge, information, and belief; my knowledge is derived from the record in this case and what has taken place in my presence and hearing in the court in which this action has been heard.

CHARLES P. DOE.

Sworn to before me this 26th day of Sept., 1911.

[SEAL.]

W. W. HEALEY,
*Notary Public in and for the City and
County of San Francisco, State of
California.*

"EXHIBIT A."

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

No. 13,676.

IN THE MATTER OF THE APPLICATION OF THE
METROPOLITAN REDWOOD LUMBER COMPANY FOR
LIMITATION OF LIABILITY.

*To the District Court of the United States, North-
ern District of California:*

In obedience to the order of the court made and entered on the 27th day of May, 1908, referring the above entitled matter to me to ascertain from the evidence taken in this proceeding, and from such further testimony as the parties might desire to offer, the value of the steam schooner "San Pedro" immediately after her collision with the steamer "Columbia" and the value of the freight pending at the time of such collision, and report the same to the court within five days from the date of such order, I, James P. Brown, United States Commissioner, do hereby respectfully report as follows:

That on the 29th day of May, 1908, I was attended by Messrs. Charles Page, Nathan Frank, William Denman, proctors herein; that no addi-

tional witnesses or further testimony was produced. After a careful consideration of the testimony heretofore taken and hereto attached, I do find as follows:

I find:

1. That the value of the "San Pedro" immediately prior to the collision with the "Columbia" was the sum of \$42,000.

2. That the estimated cost of restoring and repairing the damages to the said "San Pedro" caused by the said collision is \$20,000.

3. That the value of said vessel when brought to the port of Eureka in her disabled condition was \$22,000.

4. That a fair estimate of the expenses and cost of taking the "San Pedro" to the port of Eureka, together with a reasonable sum on account of the risks and hazards to which the vessel was subject immediately after the collision, affecting her then value, and such as, under the conditions existing at that time, it would have been reasonable to suppose might attend the work of salving her and so affect her value, I find to be \$5,500.

5. Deducting said estimated cost and expense of taking the vessel into the port of Eureka and the risks and hazards above mentioned from the

value of said vessel in her disabled condition at the port of Eureka, I find that the value of said vessel immediately following said collision was \$16,500.

6. I find there was no freight pending.

All of which is respectfully submitted.

Dated June 1, 1908.

JAS. P. BROWN,
*United States Commissioner for the
Northern District of California.*

Presented and filed in open court June 3, 1908.

JAS. P. BROWN, *Clerk,*
By FRANCES KRULL,
Deputy Clerk.

"EXHIBIT B."

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

No. 13,676.

IN THE MATTER OF THE APPLICATION OF METRO-
POLITAN REDWOOD LUMBER COMPANY, A COR-
PORATION, OWNER OF THE STEAM SCHOONER
"SAN PEDRO," FOR LIMITATION OF LIABILITY.

Upon consideration of the motion of F. A. Cut-
ler, proctor for libelants, in the action of Charles

P. Doe *et al.*, libelants, *vs.* Steamer "San Pedro," No. 13,677, pending in this court for a modification of the restraining order issued herein on August 1, 1907, so as to permit the libelants in the said action of Chas. P. Doe *et al.*, libelants, *vs.* Steamer "San Pedro" to proceed with the trial of said action and to fix a date for the trial of the same—

It is now by the court ordered that said motion be and the same is hereby granted.

Dated May 27, 1908.

JOHN J. DE HAVEN, *Judge.*

Filed May 27, 1908.

JAS. P. BROWN, *Clerk,*

By FRANCES KRULL,

Deputy Clerk.

"EXHIBIT C."

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

No. 13,677.

CHARLES P. DOE ET AL., *Libelants,*

vs.

THE STEAMER "SAN PEDRO."

The order heretofore made in the matter of the application of the Metropolitan Redwood Lum-

ber Company, owners of the steam schooner "San Pedro" for limitation of liability, No. 13,676, restraining the prosecution of the above entitled action, having been this day vacated,

It is now, by the court ordered, that the said action of Charles P. Doe *et al.*, Libelants, *vs.* Steamer "San Pedro," be set for trial, in this court, on June 19, 1908, at 10 o'clock, in the forenoon of that day.

Dated: MAY 27, 1908.

JOHN J. DEHAVEN, *Judge.*

Filed May 27, 1909.

JAS. P. BROWN, *Clerk,*

By FRANCES KRULL,

Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. Metropolitan Redwood Lumber Company, a corporation, etc., appellant, *vs.* Charles P. Doe, etc., libellants and appellees. Petition for Writ of Certiorari. J. M. Gillett, F. A. Cutler and F. R. Sweasey, Attorneys at Law, 506-507 Crocker Building, San Francisco, Cal.

IN THE DISTRICT COURT OF THE
UNITED STATES IN AND FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

In Admiralty. No. 13,677.

CHARLES P. DOE ET AL., *Libelants*,

vs.

STEAMER "SAN PEDRO" AND CARGO, *Respondents*.

Exception to Report of Commissioner Apportioning Salvage Award, Affidavit re Jurisdictional Facts, and Petition for Discontinuance of the Cause.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

William Denman, being first duly sworn, deposes and says:

I.

That he is one of the proctors for the Metropolitan Redwood Lumber Company, claimant of the steam schooner "San Pedro."

II.

That the salvage services for which an award has been made were caused proximately by a disaster to the "San Pedro," *i. e.*, a collision between her and the steamer "Columbia," and that said fact is

admitted by the libel on which the orders and decrees herein rest, and that the liability for said services is loss, damage, and injury caused by said collision.

III.

That the said Metropolitan Redwood Lumber Company, claimant, has heretofore filed its petition in said court to limit its liability for its loss, damage, and injury by said collision, the proceeding being taken pursuant to Rules 54 and 57 of the Supreme Court of the United States; that said steam schooner "San Pedro" was within the said district at the time of filing said petition, and had not been libeled in any other district.

IV.

That thereafter, by its order in said limitation proceeding duly given and made, the said United States District Court did cause due appraisement to be had of the said steam schooner "San Pedro" by the United States Commissioner, James P. Brown, and that the said James P. Brown, as said commissioner, did, pursuant to the said order of said court, cause a hearing to be had on several days, at which hearing full evidence was by him received of the value of said vessel, the libellant herein appearing at said hearing and offering testimony therein; that thereafter the said commissioner in the said limitation proceeding did find the said vessel to be valued at the sum of \$16,500

and did appraise her at said sum, and did report and return the said valuation and appraisement to said district court, and thereafter the said district court in said limitation proceeding did approve said report and valuation and appraisement by its order therein duly given and made.

V.

That thereafter the said court did make its order in said limitation proceedings, duly requiring the said Metropolitan Redwood Lumber Company to give a stipulation with sureties for the payment of said sum of \$16,500 and interest into said court whenever the same should be ordered; that thereafter and prior to the making and filing of the report of the commissioner herein apportioning the salvage award the said Metropolitan Redwood Lumber Company did give and file in said limitation proceeding its stipulation in the said sum, with sureties, and thereafter said court did approve of said stipulation and sureties.

VI.

That by virtue of said filing of said stipulation and of section 4285 of the Revised Statutes and the decision of the United States Supreme Court in *Providence & N. Y. S. S. Co. vs. Hill Manufacturing Company*, 109 U. S., 578 at 599, this court lost jurisdiction of this libel for salvage against the said steam schooner "San Pedro."

Wherefore Metropolitan Redwood Lumber Company excepts to the report of the commissioner in this cause apportioning the salvage award, on the ground that the said commissioner was without jurisdiction to make or file the same.

And the said Metropolitan Redwood Lumber Company further moves and prays that the said United States District Court discontinue all further proceeding in this libel for salvage and take no further action therein, the said petition being based on this affidavit and all papers on file herein and all evidence taken herein.

WILLIAM DENMAN.

METROPOLITAN REDWOOD LUM-
BER COMPANY,

PAGE, McCUTCHEION & KNIGHT,

By WILLIAM DENMAN, *Its Proctor.*

Subscribed and sworn to before me this 29th day of March, A. D. 1909.

[SEAL.]

CEDA DE ZALDO,

Notary Public, etc.

[Endorsed:] No. 13,677. In the District Court of the United States in and for the Northern District of California. Charles P. Doe *et al.*, libellants, *vs.* Steamer "San Pedro" and Cargo, respondents. Exception to report, etc. J. N. Gillett, F. A. Cutler, and F. R. Sweasey, attorneys at law, 506-507 Crocker Building, San Francisco, Cal.



IN THE

Supreme Court of the United States

No. 155.

METROPOLITAN REDWOOD LUMBER COMPANY, a Corporation, Claimant of the Steam Schooner "San Pedro",
Appellant,

vs.

CHARLES P. DOE, Owner of the American Steam Schooner "George W. Elder", and G. M. JESSEN, Master of the said Steamer, Themselves and All Others Entitled Libellants and
Appellees.

APPELLANT'S OPENING BRIEF.

In this cause the District Court has awarded damages to the libellants in the sum of four thousand dollars (\$4000), for towing the steamer "San Pedro" to Eureka after her collision with the steamer "Columbia", off the coast of California. (Fol. 29.) Before the Commissioner had returned his award in this libel, a proceeding to limit the liability of the Metropolitan Redwood Lumber Company, owners of the "San Pedro" had been commenced in the United States District Court for the Northern District of California,

under rule 54 of the Supreme Court of the United States. Jurisdiction had been fully acquired in that proceeding by filing of the stipulation required by rule 54 (fol. 30) and the Court had thereafter received various claims and limited the liability to sixteen thousand five hundred dollars (\$16,500). (See stipulation supplementing record, p. 3.)

The District Court in this suit received suggestion of the pendency of the limitation proceeding by a verified exception to the report of the Commissioner (fols. 29-32) and attention was then called to the Court's loss of jurisdiction. Nevertheless, the Court sustained the report and thereafter entered a decree against the appellant for thirty-six hundred and seven and 38/100 dollars (\$3607.38).

Appeal was taken from this decree and the following sole error was assigned (fol. 49) :

"Whether the said United States District Court erred in rendering the decree herein of date June 4, 1909, against the said steamship 'San Pedro', a schooner owned by said Metropolitan Redwood Lumber Company, for damages arising from the collision of the said 'San Pedro' and the 'Columbia', being the damages prayed for in the libel herein, when there was pending in the said court a separate proceeding brought by said Metropolitan Redwood Lumber Company, as such owner, for limitation of liability for such damages, in which proceeding last named due appraisal had been had under Rule 54 of the Supreme Court, and a stipulation given and filed, as required by the order of said District Court and

said Rule 54, at the time of the entry of said decree herein on June 4, 1909."

I.

THE COST OF SALVING THE "SAN PEDRO" IS A DAMAGE ARISING FROM THE COLLISION AND HENCE SHOULD BE LITIGATED IN THE LIMITATION PROCEEDING PROVIDED FOR IN SECTIONS 4283-4289 OF THE REVISED STATUTES.

Section 4283 of the Revised Statutes provides:

"Sec. 4283. (Liability of owner not to exceed his interest.) The liability of the owner of any vessel, for any embezzlement, loss or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

The liability for salvaging the "San Pedro" is a "damage" to the Metropolitan Redwood Lumber Company arising from the collision.

Charles C. Lister, 174 Fed. 288;

The Cepheus, 24 Fed. 507;

Marsden on Collisions, 6th ed., p. 110.

The Court is obliged to take cognizance of the salvage in the limitation proceedings for a variety of purposes.

The damages collected from the negligent ship by

the injured one must be paid into the fund if the injured vessel seek a limitation. *O'Brien vs. Miller*, 168 U. S. 299. The damages recovered as compensation for the payment of salvage would therefore be a part of the fund.

The liabilities of the owners of vessels arising from a collision are to be litigated in a limitation proceeding just as any other liabilities inflicted on the owner of a vessel which has suffered injury.

Norwich Co. vs. Wright, 13 Wall. 104.

That is to say that the Court must determine the salvage as a damage in determining the cross liabilities of the opposing vessels.

It is submitted that under the express language of Revised Statutes, Section 4283, as a "damage" "to the owner of a vessel" "by collision", and as a "damage" "occasioned or incurred without the privity or knowledge of the owner", the salvage sought to be recovered here should be adjudicated in the limitation proceeding.

II.

AS A DAMAGE FROM COLLISION TO BE ADJUDICATED IN THE LIMITATION PROCEEDING, THE JURISDICTION OF THE DISTRICT COURT OF THE LIBEL FILED HEREIN CEASED AS SOON AS THE STIPULATION FOR VALUE REQUIRED BY RULE 54 WAS FILED IN THE LIMITATION PROCEEDING.

The act limiting liability provides for a transfer of

the ship to trustees, and that "from and after the transfer all claims and proceedings shall cease."

Rev. Stats., Sec. 4285.

The Supreme Court has held that this "statutory injunction" arises as well when a stipulation is given as upon a surrender and *ipso facto* ousts the other courts of jurisdiction without the service of any writ on the parties litigant. The Court says:

"This injunction (i. e. by the statute itself) applies as well to claims and proceedings in state courts as to those in the federal courts" . . .

"The operation of the act is not confined to cases of actual transfer", but extends "to cases in which what is required and done is tantamount to such transfer; as where the value of the owner's interest is paid into court or secured by stipulation. . . . This view of the statutory injunction . . . renders it unnecessary to determine the question as to the legality of the writ of injunction issued by the District Court."

Providence S. S. Co. vs. Hill Mfg. Co., 109 U. S. 578, at p. 600 *et seq.*

As the Supreme Court says in a later case, holding a loss of life a claim within the statute,

"the very object of those proceedings was, not only to stop the prosecution of actions already commenced, but to prevent other suits from being brought."

Butler vs. Boston S. S. Co., 130 U. S. 527, at 550, *et seq.*

A libel for damages from a collision was dismissed by Judge Brown on showing the pendency of a limitation proceeding.

The Dimock, 52 Fed. 598.

On mandamus proceedings the Supreme Court refused a writ of mandate to the District Court to compel it to vacate the judgment of dismissal.

Morrison vs. District Court of the United States,
147 U. S. 14.

It is therefore submitted that the District Court had no jurisdiction to enter the judgment appealed from, and that the appeal should be sustained.

III.

In closing it may not be amiss to call the Court's attention to the fact that this is in a sense a friendly suit. The parties primarily interested in taking the appeal are the underwriters who, for well established reasons of business policy, have no desire to escape their liability for salvage services. The appellees desired that certain portions of the record in the limitation proceeding should be stipulated as a part of the record in this appeal. Under no theory could we have been forced to bring up this matter from an entirely extraneous proceeding. We have done so, however, desiring that every element of the relationship of the parties should be before the Court.

In the limitation proceeding the District Court took our view that the value of the ship should be deter-

mined as she lay in the ocean, a position we believe supported by the decisions of the Ninth Circuit. The question whether the salvage claim should be adjudicated in the limitation proceeding, or in a separate suit was not discussed.

If there be an apparent inconsistency in reasoning between the rulings in the Ninth Circuit cutting down the size of the fund in the limitation proceeding to the value of the vessel as she lay in the ocean, and the words of the Revised Statute, section 4283, providing that the limitation proceeding should include any liability for damage by collision, which damage has been held by equally wise tribunals to include salvage, it is proper that the inconsistency should be resolved by this tribunal. As far as the underwriters are concerned, the appeal here involves much more than a mere moot question. An appeal to the Circuit Court of Appeals is pending in the limitation proceeding on the question of the size of the fund. If the appellants there should prevail the fund for distribution to the claimants (of which appellee here is not one) would be increased by a sum including this salvage. If at the same time the decree here appealed from should stand, we would have to pay the salvage again in its satisfaction. Recourse to the paramount authority therefore seemed the only safe course to be pursued.

Respectfully submitted.

William Derman

Proctor for Appellant.

17

Office Supreme Court, U. S.
FILED.

JAN 11 1912

No. 155

JAMES H. McKENNEY,
CLERK.

In the Supreme Court
OF THE
United States

METROPOLITAN REDWOOD LUMBER COMPANY
(a corporation), Claimant of the Steam
Schooner "San Pedro",

Appellant,

vs.

CHARLES P. DOE, Owner of the American
Steamer "George W. Elder", and G. M.
JESSEN, Master of the said steamer,
themselves and all others entitled,

Libelants and Appellees.

BRIEF FOR APPELLEES.

F. A. CUTLER,
F. R. SWEASEY,
J. N. GILLET,

Proctors for Appellees.

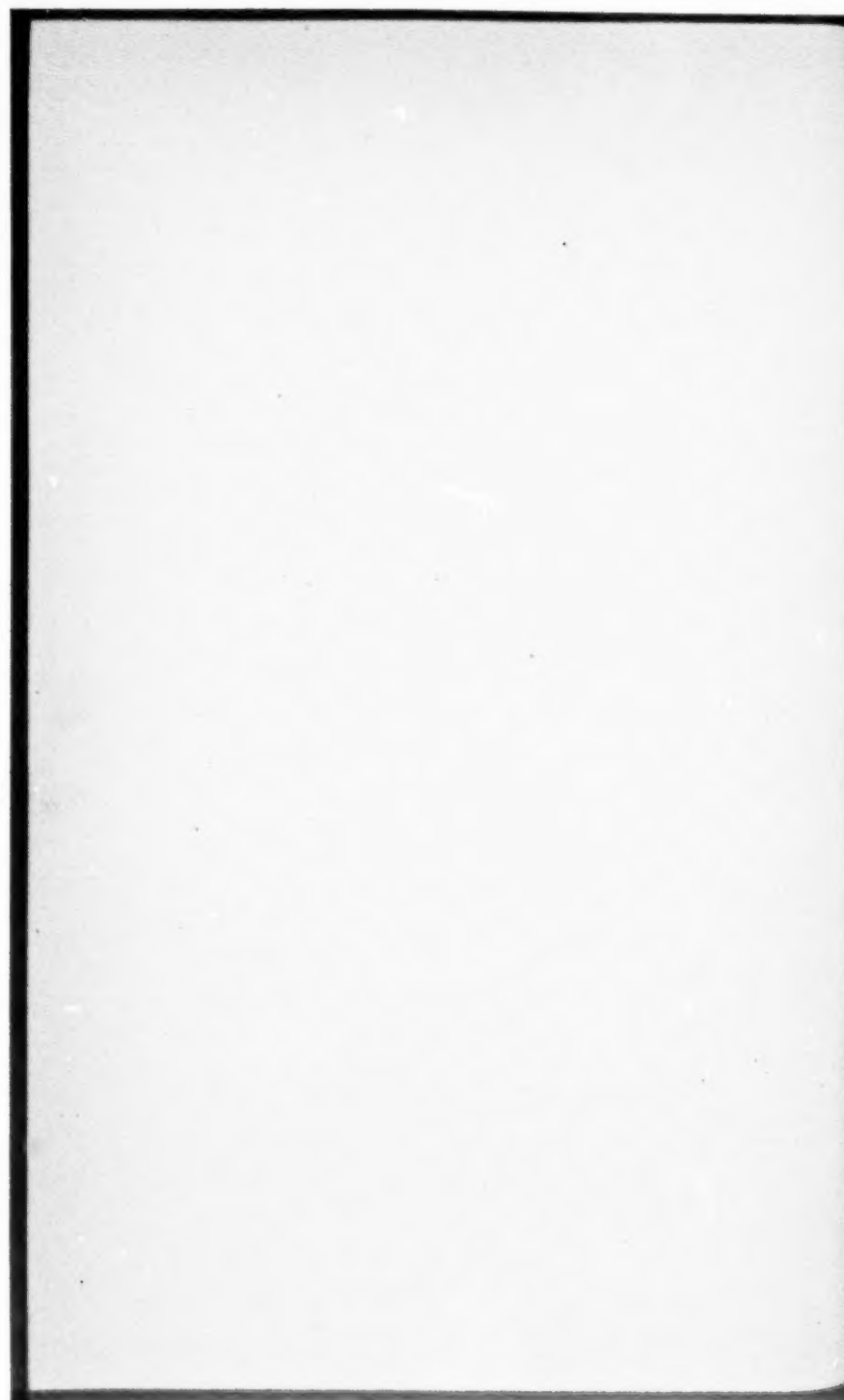
ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,

Of Counsel.

Filed this _____ day of January, 1912.

JAMES H. McKENNEY, Clerk.

By _____ Deputy Clerk



No. 155

In the Supreme Court
OF THE
United States

METROPOLITAN REDWOOD LUMBER COMPANY
(a corporation), Claimant of the Steam
Schooner "San Pedro",

Appellant,

vs.

CHARLES P. DOE, Owner of the American
Steamer "George W. Elder", and G. M.
JESSEN, Master of the said steamer,
themselves and all others entitled,

Libelants and Appellees.

BRIEF FOR APPELLEES.

The present action is one for salvage services performed by appellees in the salving of the steamer "San Pedro" and cargo. After hearing and upon report of the commissioner, a decree was entered by the District Court against the claimants of both said ship and said cargo. The fairness and justness of this award is not questioned on this appeal nor is it anywhere suggested that appellant has been in the least aggrieved thereby.

The cargo claimant refused to join in the appeal (Trans. fols. 42-43). The claimant of the vessel appears here apparently in name only (opening brief, p. 6). Even the underwriters, stated in appellant's brief to be "the parties primarily interested in taking the appeal", expressly disclaim any desire on their part to escape liability for these salvage services, yet present the abstract questions here involved under the pretext of "a friendly suit".

We concede the characterization of "friendly" as appropriate to the appeal in the sense that it does not purport to question the fairness or justness of the award or advance a single reason why appellees should not be paid for the meritorious services rendered, yet at the same time we feel constrained to suggest that these seamen who have been kept out of their just earnings for a period of over two and one-half years since the filing of the decree herein and four and one-half years since the rendition of such services (Trans. fol. 8) can hardly be expected to sit by with the same equanimity or view with the same "friendly" interest the solution of these abstract problems presented by the underwriters undoubtedly under the suggested "well established reasons of business policy".

The sole question presented by this appeal is whether the District Court erred in rendering the decree of date June 4, 1909, in favor of appellees for salvage services performed in salving the steamer "San Pedro" after collision, when at such time there was pending in said court a separate proceeding brought by appellant as

owner of such steamer, for limitation of liability for damages resulting from such collision, in which limitation of liability proceedings due appraisement had been had under Rule 54 of the Supreme Court and a stipulation for value given and filed as required by the order of the District Court and said Rule 54, at the time of the entry of said decree herein on June 4, 1909?

Appellant points out that the District Court in this salvage suit received suggestion of the pendency of the limitation of liability proceedings through exceptions filed to the report of the commissioner (opening brief, page 2), which exceptions were in fact filed March 29, 1909 (Trans. fols. 4-31).

Prior to this date, however, this salvage suit, with the acquiescence of appellant, had been for all practical purposes completed by virtue of the following proceedings:

August 15, 1908, the cause being at issue, was by consent of proctors for respective parties submitted on testimony and exhibits on file to the court, on briefs (Trans. fol. 4).

December 31, 1908, findings of fact and conclusions of law filed, determining value of "San Pedro" as salvaged at \$22,000. Determining value of salvage services rendered at \$4,000 and prorating same between "San Pedro" and cargo in proportion to the value of each. Awarding \$3,000 to owner of salving vessel and \$1,000 to crew (Trans. fols. 18-4).

January 7, 1909. Decree filed, decreeing value of "San Pedro" as salvaged at \$22,000 and that libelants

recover \$4,000 with interest, to be paid pro rata by "San Pedro" and cargo in proportion to value of each. Awarding \$3,000 to owner of salving vessel and \$1,000 to crew to be prorated among crew in proportion to wages received. Reference to commissioner to ascertain and report value of cargo salvaged and proportionate amount of \$4,000 to be paid by cargo, also respective amounts due master and members of crew of salving vessel (Trans. fol. 19).

March 5, 1909. Stipulation entered into between proctors for all parties determining value of cargo salvaged at \$2,394.44 as basis of computing its contribution to salvage awarded by the decree of January 7, 1909, and determining also the wages of each member of the crew as basis of computing their respective shares in such salvage award (Trans. fols. 24-27).

March 26, 1909. Report of commissioner based upon stipulation aforesaid filed. Report merely completing mathematical computations (Trans. fols. 4-20).

We submit that appellant had participated in this separate salvage proceeding throughout up to and including their stipulation of March 5, 1909, upon which date every issue had been resolved and every essential element determined. They should not thereafter, while there was lacking but the mere mechanical act of signing and filing a second decree embodying merely the complete mathematical computations, be permitted to escape this award made after full and fair hearing and force a new trial of the matters involved in another

proceeding by virtue solely of the suggestion of pending limitation of liability proceedings.

While appellant's exception to the report of commissioner alleges the filing by it of a stipulation for value in said limitation of liability proceedings prior to the filing of the commissioner's report in this independent salvage proceedings, the transcript nowhere shows this stipulation for value to have been filed in said limitation of liability proceedings before the making of the stipulation entered into by all of the parties to this separate salvage suit, which said stipulation fully covered the facts set forth in the commissioner's report and together with the prior finding of facts and decree of the District Court, completely determined this salvage suit prior to the filing of such stipulation for value. In this connection also it must be borne in mind that the question presented by this appeal concerns solely the court's power to render the second decree of June 4, 1909, several months subsequent to the filing of the commissioner's report.

However, in the present instance the court had amended the injunction in the limitation proceedings in order to permit the trial of this separate salvage action (stipulation supplementing record, p. 4), and we deem an injunction from the court entertaining such limitation of liability proceedings as actually necessary in order to restrain further proceedings in another action brought prior to the filing of the petition in such limitation proceedings. This construction we deem has been placed upon the act by this court in adopting Rule 54 providing

for such injunction. The act itself does not state what court shall be resorted to, nor what proceedings shall be taken and is in effect but a mere outline to be supplemented by further provisions, such as these court rules, before becoming effective. This is indicated in the case quoted from and relied upon by appellant, *Providence & N. Y. Steamship Co. v. Hill Mfg. Co.*, 109 U. S 578, in which case an injunction was in fact issued and in which decision construing the provisions of said Act, the following language is used:

“We have said that, by the provisions of the act, the scheme was sketched in outline. A reference to its provisions shows that it was only an outline, and that the regulation of details as to the form and modes of proceeding was left to be prescribed by judicial authority. * * * It laid down a few general principles and propositions and left it to the courts to enforce them and carry them into practical effect.”

The issuance of an injunction as an essential step in the enforcement in the provisions of the statute has been recognized in numerous cases, including:

The Lotta, 150 Fed. Rep. 219-21;

Delaware River Ferry Co. v. Amos, 179 Fed. Rep. 756-58-9;

In re Morrison, 147 U. S. 14-35;

Moran v. Sturges, 154 U. S. 256-270;

In re Providence etc. S. S. Co., 20 Fed. Cas. No. 11451; 6 Ben. 124;

The H. F. Dimock, 52 Fed. Rep. 598-601;

Norwich & N. Y. Trans. Co. v. Wright, 13 Wall. 104;

In re Long Island Transf. Co., 5 Fed. Rep. 629.

In this connection also we deem the order of the District Court modifying the injunction issued in the limitation of liability proceedings so as to permit libelants to proceed with the trial of this independent salvage action (stipulation supplementing record, p. 4) as involving an implied finding to the effect that in that particular proceeding the claim for salvage here sued upon, was not such a claim as is contemplated by the provisions of Sec. 4283, R. S.

**SALVAGE CLAIM NOT A "DAMAGE" UNDER PROVISIONS OF
SEC. 4283 ET SEQ. R. S.**

The underlying purpose as well as the express language of Sec. 4283, R. S., clearly indicates the use of the word "damage" as referring solely to damages resulting to others than the ship-owner, and for which said ship-owner is liable.

The loss which may have resulted to an owner of a ship by reason of his having paid or being liable for salvage services resulting from a collision and which it would undoubtedly be proper for him to include in his damages recoverable from the owner of another vessel negligently causing the collision (*Charles C. Lister*, 174 Fed. Rep. 288, cited by appellant), is not as contended for by appellant, a "damage" arising from the collision within the contemplation of Sec. 4283, R. S. The "damage" arising from collision referred to in this section includes solely damage to other vessels and their cargoes.

"The section as constructed limits the ship-owner's liability in three classes of damage or wrong

happening without their privity and by the fault or neglect of the master or other persons on board, viz: 1. Damage to goods on board; 2. *Damage by collision to other vessels and their cargoes*; 3. Any other damage or forfeiture done or occasioned."

Norwich and N. Y. Trans. Co. v. Wright, 13 Wall. Rep. 104.

"The liability for salving the 'San Pedro' " as "a " 'damage' to the Metropolitan Redwood Lumber Co. " arising from the collision" in the sense in which such term is used in the cases cited by appellant, is of no other or different nature or character than the liability for repairs made to such vessel as a "damage" to appellant arising from the collision. It is, however, perfectly clear that repairs are not a "damage" within the contemplation of this section of the Revised Statutes, nor are they an element to be considered in fixing the stipulation for value.

"The value of the repairs that might have been made upon her in the meantime would be excluded. (From appraisement.) *The City of Norwich*, 118 U. S. 468, 471."

The Doris Eckhoff, 30 Fed. Rep. 140.

Furthermore where, as in the present instance, the collision was caused by negligence of appellant itself and no damages whatever are recoverable against the owner of the other vessel on account of payment of salvage or other loss, we have no case of damage to appellant, even in the broader meaning of such term as used in the decisions, *Charles C. Lister*, 174 Fed. Rep. 288, and *O'Brien v. Miller*, 168 U. S. Rep. 299, cited at pages 3 and 4 of appellant's opening brief.

The provisions of Sec. 4284, R. S., are not only limited in effect to losses suffered by others than the one petitioning for limitation of liability, but deal solely with losses subject to a pro-rata payment from the sum for which such owner may be liable. The section provides:

“They shall receive compensation from the owner of the vessel *in proportion to their respective losses*; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of *apportioning the sum* of which the owner of the vessel may be liable among the parties entitled thereto.”

In re Catskill, 95 Fed. Rep., at page 702, Judge Brown refers to the above entitled section in the following language:

“Section 4284 of the Revised Statutes, providing for the distribution of the proceeds upon a surrender of the vessel, declares that the proceeds shall be distributed among the claimants ‘in proportion to their respective losses’; and no distinction is made between the different kinds of damage, whether to property or person. * * * It is evident, therefore, that the statute not only makes the fund derived from the sale of the vessel a fund applicable to all claims pro rata (see, also, rule 55 in admiralty), but that it bars all other remedy. The necessary effect of this is to make every admissible claim a statutory lien upon the fund. The fund must be distributed, therefore, according to the statute itself, i. e., pro rata among the claims arising from the collision. (*Butler v. Steamship Co.*, supra; *The Maria and Elizabeth*, 12 Fed. 627.)”

Proctor for appellant has never had the temerity to suggest a prorating of this salvage claim so highly

avored in law for the reason that without such assistance the res might have been wholly lost to all. The service being beneficial to all parties having an interest in or claim to the ship or freight or cargo.

Section 4285, R. S., is expressly limited to the liability of the owner for loss or destruction of "any property, goods or merchandise" if he shall transfer his interest in such vessel and freight to a trustee for the benefit of "*such claimants*". The term "*such claimants*" unquestionably refers to claimants who have suffered "damage" by reason of the collision other than the owner, and claimants whose right of recovery is subject to being limited or entirely defeated by the petitioner's showing in the limitation of liability proceedings.

In the case of *Providence & N. Y. Steamship Co. v. Hill Mfg. Co.*, 109 U. S. 578, Justice Bradley, reviewing the underlying principles of the limitation of liability act, comments as follows:

"Unless some proceeding of this kind were adopted which should bring all the parties interested into one litigation, and all the claimants into concourse for a *pro rata* distribution of the common fund, it is manifest that in most cases the benefits of the act could never be realized. * * * The questions to be settled by the statutory proceedings being, *first*, whether the ship or its owners are liable at all, if that point is contested and has not been decided; and, *secondly*, if liable, whether the owners are entitled to a limitation of liability, must necessarily be decided by the district court having jurisdiction of the case; and to render its decision conclusive, it must have entire control of the subject to the exclusion of other courts and jurisdiction. If another

court may investigate the same questions at the same time, it may come to a conclusion contrary to that of the district court; and if it does, as happened in this case, the proceedings in the district court will be thwarted and rendered ineffective to secure to the ship-owners the benefit of the statute."

The salvage award here involved is entirely independent of the question of petitioner's liability for the collision and utterly independent of whether, in case negligence is shown, the petitioner may yet succeed in limiting his liability for the various claims for damages growing out of the collision. This salvage claim being entirely independent of the issues involved in the limitation of liability proceedings, is not embraced within either the letter or the spirit of Sections 4283 to 4285 of the Revised Statutes.

Furthermore, the court's order modifying the injunction in such limitation of liability proceedings so as to permit appellees to proceed with this separate salvage proceeding necessarily involved a finding of fact that this particular claim for salvage services was not a claim within contemplation of these sections of the Revised Statutes, even conceding such sections to be self-operative.

SALVAGE SERVICES SUBSEQUENT TO TERMINATION OF VOYAGE.

The libel alleged that prior to the rendition of the salvage services the steamer "San Pedro" had been abandoned by her crew and was a derelict. That she

was returned to the port of Eureka and did not reach her destination.

In the limitation of liability proceedings William Denman, Esq., proctor for Metropolitan Redwood Lumber Company, appellant here and petitioner there, contended in a statement made at the taking of depositions upon hearing upon appraisalment of the "San Pedro", that her voyage terminated at the point of the collision and wreck.

"Mr. DENMAN. The statute requires, before the monition shall be issued that the commissioner shall make due appraisalment of the vessel at the termination of her voyage; her value as she lies in the Pacific is determined by several elements; the method pursued by the courts is to determine the value of the vessel when she reaches a safe harbor, deducting therefrom the cost of getting her there and also the risk of getting there; and in order to determine the value of the vessel as she lies wrecked in the ocean, that appears to be the only way in which said valuation can be determined. Her value as she lies in the ocean consists of what her value is as she lies in a safe port, less the cost of getting her there, less the risk of getting her there. In this case we desire to show all those elements in order to show her value" (stipulation supplementing record, p. 2).

The commissioner's report appraising the vessel at \$16,500.00 in which amount the stipulation for value was given in the limitation of liability proceedings was, as insisted by William Denman, Esq., proctor for appellant, based upon the value of the vessel immediately following the collision and while she lay wrecked in the ocean (stipulation supplementing record, pp. 2-3).

The adoption by the court of this report, appraising the vessel at a point in the ocean immediately after the wreck, involves an implied finding of fact that the voyage was broken up and terminated at that point.

"It seems to us that the fair inference to be drawn from Section 4283 is that the voyage defines the limits and boundary of the casus, the case, to which the law is to be applied. * * * Their (owners) liability is fixed when the voyage is ended. The subsequent history of the wreck can only furnish evidence of its value at that point of time. * * * It enables the owner to lay out money in recovering and repairing the ship, without increasing the burden to which he is subjected."

Place v. Norwich & N. Y. Trans. Co., 118 U. S. 468.

"In order that the liability of the owner of an offending vessel may not exceed his interest, the rule has been settled by the Supreme Court that the value thereof shall be taken as of immediately after the damage was done; and the point is to meet the proposition that, to give full effect to the logical sequence of that rule, everything else should have relation to that point of time. In other words, the proposition to be met is that, when the application for a limitation of liability had been made by the owners of the *Tryton* she and they were purged as of the time immediately after the *Pine Forest* was wrecked."

The Pine Forest, 129 Fed. Rep. 700-5.

The appraisement is to be made and the owner's liability fixed as of the time of the termination of the voyage.

Gokey v. Fort, 44 Fed. Rep. 364;

The Abbie C. Stubbs, 28 Fed. Rep. 719;

The Giles Loring, 48 Fed. Rep. 463-72;
The Rose Culkin, 52 Fed. Rep. 328;
The Doris Eckhoff, 30 Fed. Rep. 140;
The Great Western, 118 U. S. 520-25.

Voyage terminated by abandonment at sea.

Carver, Carriage by Sea, Secs. 307-8;
Spencer on Marine Collisions, Sec. 220.

The stipulation should be in an amount equal to the value of the ship at the time her voyage was terminated and is to be estimated by deducting from the value at the port of safety the value of the salvage services.

Pacific Coast Co. v. Reynolds, 114 Fed. Rep. 877;
The Abbie C. Stubbs, 28 Fed. Rep. 719;
The Pine Forest, 129 Fed. Rep. 705;
The Anna, 47 Fed. Rep. 525;
Benedict Admiralty, Fourth Edition, Sec. 371.

The District Court having at the instigation of appellant, adopted a point of time immediately after the collision as the termination of the voyage, which fact is therefore determined for this appeal, that is the point of time at which the value of the vessel and freight pending is to be fixed and also the point of time when the liability to be limited must be ascertained.

“Whenever the owner shall take his proceedings to limit his liability, he must take it as of the time of the end of the voyage out of which the liabilities against which he seeks to limit his liability arose. That is the time as to which the value of the vessel and freight pending is to be fixed, and that is the time when the liability to be limited must be ascertained. *The City of Norwich*, 118 U. S. 468, 490;

The Great Western, 118 U. S. 520; The Dorris Eckhoff, 30 Fed. Rep. 140; The Giles Loring, 48 Fed. Rep. 468."

In re Meyer, 74 Fed. Rep. 881-97.

As "the subsequent history of the wreck can only "furnish evidence of its value at that point of time" (*Place v. Norwich & N. Y. Trans. Co.*, 118 U. S. 468), it unquestionably follows that the claim for salvage services rendered subsequent to this point of time is entirely without the contemplation of the provisions of Sections 4283 to 4285, R. S.

While denying that this appeal presents a question involving the jurisdiction of the District Court, as a Federal Court, which the Judiciary Act of March 3, 1891, permits to be certified directly to this court (*Louisville Trust Co. v. Knott*, 191 U. S. 225-33), yet suggest that in any case, any jurisdictional question presented, necessarily involved the determination of a preliminary question of fact. Any lack of power in the District Court to proceed with this separate salvage suit was contingent upon such salvage services being a claim within the provisions of Secs. 4283-5 of the Revised Statutes. The question whether such services were or were not a claim under such sections was again entirely dependent upon a finding of the court as to the precise time at which the voyage of the "San Pedro" terminated. The order of the court in the limitation of liability proceedings, modifying the injunction so as to permit this independent salvage suit to proceed (stipulation supplementing record, p. 4), as well as its order

fixing the amount of the stipulation for value therein (stipulation supplementing record, pp. 2-3), also order of the court herein directing continuance of this separate salvage proceeding (Stipulation Supplementing Record p. 4), each involved an implied finding of the court as to the point of time at which the voyage terminated, conclusive upon this appeal.

APPELLANT ESTOPPED.

The report of the commissioner containing his appraisal (stipulation supplementing record, pp. 2-3) clearly and unquestionably shows the appraisal of the vessel in the limitation of liability proceedings at the sum of \$16,500.00, to have been made by said commissioner precisely as directed by William Denman, Esq., proctor for appellant herein (stipulation supplementing record, p. 2), viz: at the point where she lay wrecked in the ocean immediately after the collision; which value was reached by deducting from the value of said vessel at the port of Eureka, the port of safety to which she was taken by virtue of appellees' salvage services, the value of such salvage services.

The report of the commissioner as well as the proceedings upon taking testimony as to value upon which such report and the subsequent stipulation in the limitation of liability proceedings were founded, clearly show no provision to have been made in such proceedings for the payment of the salvage services here involved. To the contrary, such portion of the record in such limitation

of liability proceedings as is contained in the stipulation supplementing the record here, conclusively establishes the fact that at the suggestion of William Denman, Esq. (proctor for Metropolitan Redwood Lumber Co., petitioner there and appellant here), the commissioner in thus determining the amount for which the stipulation for value was therein written, actually deducted from the salved value of the vessel, the amount of the salvage services performed by these appellees.

Appellant's endeavors first to force the court to deduct the amount of the salvage services from the salved value of the vessel in fixing the amount of the stipulation for value, and thereafter force the salvors to seek payment for their services out of such stipulation for value, are not only unjust to appellees but would greatly impair the rights of all those creditors who have already filed claims in such limitation of liability proceedings. As an illustration of the absurdity of appellant's contention in this regard, we suggest that a case might easily arise where the value of the salvage services amounted to 50 per cent of the salved value of the vessel. In such case, if the appraisement of the vessel should be reached by first deducting the value of the services, a stipulation in an amount equal to such appraised value would be no more than sufficient to pay the claim of such salvors to the exclusion of all other claimants.

We submit that the voyage of the San Pedro terminated at the point where she lay a derelict after the collision, and that the appraisement in the limitation

of liability proceedings in accordance with appellant's contentions, determining the value at this point, was perfectly justifiable and proper. That the order of the District Court made in the limitation of liability proceedings, impliedly recognizing these salvage services as a claim arising subsequent to the termination of the voyage of the "San Pedro", by limiting the effect of the injunction theretofore issued in such limitation proceedings so as to permit the continuance of this separate action thereon, was but the logical and necessary result of the court's action in adopting appellant's contention as to the place of appraisement. That the absence of any claim for these salvage services in such limitation of liability proceedings is naturally accounted for by reason of the success attending appellant's efforts to secure an appraisement and stipulation in such amount that no provision was therein made for the payment of such claim, but from which to the contrary, it was expressly excluded. That the decree herein should be affirmed.

Dated, San Francisco,

January 2, 1912.

Respectfully submitted,

F. A. CUTLER,

F. R. SWEASEY,

J. N. GILLET,

Proctors for Appellees.

ALDIS B. BROWNE,

ALEXANDER BRITTON,

EVANS BROWNE,

Of Counsel.



Due service and receipt of a copy of the within is hereby admitted

this.....day of January, 1912.

Proctor for Appellant.

No. 155.

IN THE

Supreme Court of the United States

METROPOLITAN REDWOOD LUM-
BER COMPANY, a Corporation,
Claimant of the Steam Schooner "San
Pedro,"

Appellant,

vs.

CHARLES P. DOE, Owner of the Ameri-
can Steamer "George W. Elder", and
G. M. Jessen, Master of the Said Steamer,
Themselves and All Others Entitled,

Libellants and Appellees.

APPELLANT'S REPLY BRIEF.

In our opening brief we have shown that the limitation proceeding of Sections 4283 to 4289 of the Revised Statutes includes the litigation of all claims for damage from collision, and that the claim for salvage is a damage from collision. We do not see that any adequate answer has been made to our showing.

Appellees' argument proceeds largely on the theory that the "San Pedro" was in fault, and that therefore the claim against her owners for salvage is not a damage consequential from the collision which could be

recovered from the persons wrongfully causing the collision. It is a complete answer, that the salvage liability is a damage consequent from the collision for which the owner is liable, whether or not he can shift that liability to some one else.

It is a second complete answer to this contention that *the record does not show* that the "San Pedro" was in fault in the collision. It is a third answer that even if she were in fault, the opposing vessel (being in fact equally in fault) would be liable for half the damage.

The real question is whether the collision is the proximate cause of the damages for which the owners are liable in the salvage suit and it must be patent beyond all cavil that the collision was the sole cause.

II.

THERE IS NO DISPUTED QUESTION OF FACT INVOLVED IN THE APPEAL.

The question here is purely one of law, based on libellants' and appellees' pleading of the facts and the stipulated record. It is as follows: If a vessel, being wrecked from a collision which renders her helpless, and from which she becomes a derelict (Libel, fol. 8), is salvaged and taken to a safe port, are the damages for which the owners are liable in the salvage suit "damages by collision" within the meaning of Section 4283 of the Revised Statutes?

There is no question as to whether the Court decided that the voyage had terminated at the wreck. It did so decide and we are not here disputing it. We

are raising a question of law, admitting as true the construction of the facts most favorable to the libellant.

III.

HARDSHIPS CANNOT AFFECT THE JURISDICTION.

Our opponents dwell much on the hardship of being obliged to try again in the limitation proceeding the matters tried in the salvage suit. This is also going *de hors* the record and assuming they would have to try them here again. Following them again out of the record, it is but fair to state that we offered to admit a claim in the limitation proceeding for the amount of salvage shown here, and on two occasions urged them to file such a claim in that proceeding, so that in the event they should lose in this appeal their salvage would have been recovered from the limited fund.

On the question of hardship we again point out that there is an appeal now pending in the limitation proceeding, in which the claimants are seeking to have the fund based on the "San Pedro's" valuation in port after salvage, that is without deducting the cost of getting her from the place of the wreck. If they there succeed and we had not appealed here, we would have to pay the salvage twice, once in the increased fund and once here.

But the hardship to neither party can affect the question of jurisdiction, and under the decision of this Court in *Providence SS. Co. vs. Hill Mfg. Co.*, 109 U. S. 578, it seems clear that the pendency of the limi-

tation proceeding after the filing of the stipulation for value, operates as a "statutory injunction" depriving other Courts of the right to award damages on claims which can be considered in the limitation proceeding.

In that case a writ of injunction had been issued and its validity as enjoining suit had been questioned. Admiralty Rule 54 provides for the issuance of an injunction in the limitation proceeding, evidently to restrain suits begun before the stipulation or transfer has been made. At any rate, whatever the purpose of the provision of *the rule* allowing the injunction, this Court held that it was unnecessary to consider the question of the validity of the writ after the filing of the stipulation for value in the limitation proceeding, for the suit itself, by virtue of *the Statute* (Rev. Stats., 4285), automatically caused the cessation of "all claims and proceedings."

Providence etc. Co. vs. Hill Mfg. Co., 109 U. S. 578, at 599, *et seq.*

In the Providence case above referred to, the Court was considering the effect of a Congressional Statute ordering "all proceedings to cease" on a suit in the State Court. There can be no question as to the power of the Congressional mandate over the salvage case in the Federal Court. Upon the filing of the stipulation for value in the limitation proceeding the salvage proceeding "ceased." The cause of the cessation was properly suggested to the Court (fols. 29 and 30), and the decree for salvage subsequently rendered was in ex-

cess of the Court's jurisdiction and subject to review here.

IV.

ESTOPPEL.

The salvage proceeding here before the Court is separate and distinct from the proceeding for limitation of liability. An appeal in the one can in no way bring up the *record* in the other. So far as pendency of the latter as a matter of suggestion appears in the *record* of the salvage case, it is properly a matter to be here considered. On this record is squarely presented the question certified by the District Judge, i. e., whether the pendency of the limitation proceeding deprived the District Court of the power to give relief in the salvage proceeding.

Our opponents have sought to go outside the record in this proceeding and, with our consent, have introduced before this Court an argument made in the limitation proceeding on the question of the appraisal of the value of the "San Pedro" for purposes of determining the stipulation for value of the vessel and her freight pending. It is important to remember that this stipulation is given prior to issuance of the monition in the limitation proceeding and that at that time jurisdiction had been acquired over *none* of the claimants, and no claim, even for salvage, had been attempted to be filed in that proceeding. Under Rule 54 there is no *res* against which to file the claim until *after* the stipulation, *based* on the appraisal, is filed.

It is *from and after* the filing of the stipulation (which is in lieu of the transfer of the ship to trustees) that all other actions and proceedings shall cease. (Rev. Stats., 4285.)

It is thus apparent that the question of the right of the Court in the limitation proceeding to take jurisdiction of the salvage claim *could* not have been before the Court when the argument on the stipulation was made.

If, when the salvage claimant subsequently appeared, he was dissatisfied with the amount of the stipulation, his plain remedy was to move for an increase of the appraisement, a right which any claimant has.

In re Morrison, 147 U. S. 14, at 35.

Although irrelevant, we consented to the insertion of the portion of our argument on the question of the valuation of the ship. It should be noted that in the quoted portions we did not claim that the voyage had in fact been terminated by the wreck. (Stipulation supplementing Record, p. 2.) We frankly admit, however, the inconsistency of *reasoning* between the cases holding that the vessel shall be appraised as she lies after the accident and the plain provision of the law that the limitation proceeding shall cover damages to the owner from collision, with the equally clear decisions that the salvage claim is a damage arising from collision.

These lines of decision are, however, on entirely different issues, and we are not responsible for it if the

processes of reasoning of the various tribunals are not entirely consistent. We are not aware of any principle of estoppel which prevents a litigant from invoking in one case the law as established by a line of authorities to support him on issue "A", and also in another case to invoke the law as established by another line of authorities to support him on issue "B", because the reasoning in the two lines of authority is inconsistent. Each is the law of its respective issue until the two inconsistent lines are resolved, as we hope they will be in this case.

It is therefore submitted that the appeal should be sustained and the cause dismissed.

Respectfully submitted,

CHARLES PAGE,
WILLIAM DENMAN,

Proctors for Appellant. o

THE SAN PEDRO.¹

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 155. Submitted December 22, 1911.—Decided February 19, 1912.

The manifest object of the fifty-fourth rule in admiralty cannot be defeated solely because its enforcement might involve expense, delay or inconvenience.

The limited liability proceedings under §§ 4283 *et seq.*, Rev. Stat., is

¹ Docket title: Metropolitan Redwood Lumber Co., Claimant of the Steamer "San Pedro," Appellant, *v.* Charles P. Doe, Owner of the American Steamer "George W. Elder," et al.

in its nature exclusive of any separate suit against an owner on account of the ship. The monition which issued after surrender and stipulation for value requires every person to assert his claim in that case.

One having a claim for salvage against a vessel whose owners have instituted proceedings under §§ 4283 *et seq.*, Rev. Stat., cannot proceed in admiralty in a separate suit, and must prove his claim in the limited liability proceeding.

The issuing of an injunction in the limited liability proceeding is not necessary to stop proceedings in other courts on claims against the vessel or its owners. Power to grant an injunction exists under § 4283, Rev. Stat., but when the procedure required by rule 54 has been followed, the monition itself has the effect of a statutory injunction. *Providence, & N. Y. Steamship Co. v. Hill Mfg. Co.*, 109 U. S. 578.

Quære: Whether liability for towage into port of a vessel after collision is a claim like one for repairs by reason of the collision for which the owners of the injured vessel may recover from guilty colliding vessel.

Under §§ 4283, 4284, Rev. Stat., as amended by § 18 of the act of June 26, 1884, 23 Stat. 55, c. 12, any and all debts and liabilities of the owner incurred on account of the ship without his privity or fault are included in the limited liability proceeding, including claim for salvage after collision. *Richardson v. Harmon*, 222 U. S. 96.

Quære: Whether a highly meritorious salvage service, benefiting alike the owner and creditors of a vessel, is entitled to preference from the fund.

THE facts, which involve the construction of the statutes limiting liability of vessel owners and practice and procedure thereunder, are stated in the opinion.

Mr. William Denman and Mr. Charles Page for appellant:

The cost of salving the *San Pedro* is a damage arising from the collision and hence should be litigated in the limitation proceeding. *The Charles G. Lister*, 174 Fed. Rep. 288; *The Cepheus*, 24 Fed. Rep. 507; Marsden on Collisions, 6th ed., 110.

The court is obliged to take cognizance of the salvage in the limitation proceedings for a variety of purposes.

The damages collected from the negligent ship by the

223 U. S.

Argument for Appellant.

injured one must be paid into the fund if the injured vessel seeks a limitation. *O'Brien v. Miller*, 168 U. S. 299. The damages recovered as compensation for the payment of salvage would therefore be a part of the fund.

The liabilities of the owners of vessels arising from a collision are to be litigated in a limitation proceeding just as any other liabilities inflicted on the owner of a vessel which has suffered injury. *Norwich Co. v. Wright*, 13 Wall. 104.

As damages from the collision were to be adjudicated in the limitation proceeding, the jurisdiction of the District Court of the libel ceased as soon as the stipulation for value required by rule 54 was filed in the limitation proceeding.

The statutory injunction provided for in Rev. Stat., § 4285, arises as well when a stipulation is given as upon a surrender and *ipso facto* ousts the other courts of jurisdiction without the service of any writ on the parties litigant. *Providence S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578, 600; *Butler v. Boston S. S. Co.*, 130 U. S. 527, 550; *The Dimock*, 52 Fed. Rep. 598; *Morrison v. District Court of the United States*, 147 U. S. 14.

Even if the *San Pedro* was in fault, the claim against her owners for salvage is not a damage consequential from the collision which could be recovered from the persons wrongfully causing the collision. The salvage liability is a damage consequent from the collision for which the owner is liable, whether or not he can shift that liability to some one else.

The real question is whether the collision is the proximate cause of the damages for which the owners are liable in the salvage suit and it must be patent beyond all cavil that the collision was the sole cause.

There is no disputed question of fact involved in the appeal.

The hardship to neither party can affect the question of

jurisdiction. *Providence S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578.

The salvage proceeding here before the court is separate and distinct from the proceeding for limitation of liability. An appeal in the one can in no way bring up the record in the other.

If, when the salvage claimant subsequently appeared, he was dissatisfied with the amount of the stipulation, his plain remedy was to move for an increase of the appraisal, a right which any claimant has. *In re Morrison*, 147 U. S. 14 at 35.

Mr. F. A. Cutler, Mr. F. R. Sweasey, Mr. J. N. Gillett, Mr. Aldis B. Browne, Mr. Alexander Britton and Mr. Evans Browne for appellees:

Appellant, having participated in this separate salvage proceeding throughout up to and including their stipulation of March 5, 1909, upon which date every issue has been resolved and every essential element determined, should not thereafter, while there was lacking but the mere mechanical act of signing and filing a second decree embodying merely the complete mathematical computations, be permitted to escape this award made after full and fair hearing and force a new trial of the matters involved in another proceeding by virtue solely of the suggestion of pending limitation of liability proceedings.

The issuing of an injunction as an essential step in the enforcement of the provisions of the statute has been recognized in numerous cases. *The Lotta*, 150 Fed. Rep. 219; *Delaware River Ferry Co. v. Amos*, 179 Fed. Rep. 756, 758; *In re Morrison*, 147 U. S. 14, 35; *Morgan v. Sturges*, 154 U. S. 256, 270; *In re Providence &c. S. S. Co.*, 20 Fed. Cas. No. 11,451; S. C., 6 Ben. 124; *The H. F. Dimock*, 52 Fed. Rep. 598, 601; *Norwich & N. Y. Trans. Co. v. Wright*, 13 Wall. 104; *In re Long Island Transf. Co.*, 5 Fed. Rep. 629.

223 U. S.

Argument for Appellees.

The salvage claim is not a damage under provisions of §§ 4283 *et seq.*; *Norwich & N. Y. Trans. Co. v. Wright*, 13 Wall. 104; *The Doris Eckhoff*, 30 Fed. Rep. 140.

Where, as in the present instance, the collision was caused by negligence of appellant itself and no damages whatever are recoverable against the owner of the other vessel on account of payment of salvage or other loss, there is no case of damage to appellant. *The Charles G. Lister*, 174 Fed. Rep. 288; *O'Brien v. Miller*, 168 U. S. 299.

The provisions of § 4284 are not only limited in effect to losses suffered by others than the one petitioning for limitation of liability, but deal solely with losses subject to a pro-rata payment from the sum for which such owner may be liable. *In re Catskill*, 95 Fed. Rep. 702.

Section 4285 is expressly limited to the liability of the owner for loss or destruction of any property, goods or merchandise if he shall transfer his interest in such vessel and freight to a trustee for the benefit of such claimants. *Providence & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578.

This salvage claim being entirely independent of the issues involved in the limitation of liability proceedings, is not embraced within either the letter or the spirit of §§ 4283 to 4285, Revised Statutes.

The salvage services were subsequent to termination of voyage.

Prior to the rendition of the salvage services the steamer *San Pedro* had been abandoned by her crew and was a derelict.

The commissioner's report appraising the vessel was based upon the value of the vessel immediately following the collision and while she lay wrecked in the ocean.

The adoption by the court of this report, appraising the vessel at a point in the ocean immediately after the wreck, involves an implied finding of fact that the voyage was broken up and terminated at that point. *Place v. Norwich*

& *N. Y. Trans. Co.*, 118 U. S. 468; *The Pine Forest*, 129 Fed. Rep. 700, 705; *Gokey v. Fort*, 44 Fed. Rep. 364; *The Abbie C. Stubbs*, 28 Fed. Rep. 719; *The Giles Loring*, 48 Fed. Rep. 463, 472; *The Rose Culkin*, 52 Fed. Rep. 328; *The Doris Eckhoff*, 30 Fed. Rep. 140; *The Great Western*, 118 U. S. 520, 525.

A voyage is terminated by abandonment at sea. *Carver, Carriage by Sea*, §§ 307-308; *Spencer on Marine Collisions*, § 220.

The stipulation should be in an amount equal to the value of the ship at the time her voyage was terminated and is to be estimated by deducting from the value at the port of safety the value of the salvage services. *Pacific Coast Co. v. Reynolds*, 114 Fed. Rep. 877; *The Abbie C. Stubbs*, 28 Fed. Rep. 719; *The Pine Forest*, 129 Fed. Rep. 705; *The Anna*, 47 Fed. Rep. 525; *Benedict, Admiralty*, 4th ed., § 371.

The District Court having, at the instigation of appellant, adopted a point of time immediately after the collision as the termination of the voyage, which fact is therefore determined for this appeal, that is the point of time at which the value of the vessel and freight pending is to be fixed and also the point of time when the liability to be limited must be ascertained. *In re Meyer*, 74 Fed. Rep. 881, 897, and cases cited.

Appellant is estopped by its own action in regard to the appraisement from now endeavoring to force the court to deduct the amount of the salvage services from the salvaged value of the vessel in fixing the amount of the stipulation for value, and thereafter force the salvors to seek payment for their services out of such stipulation for value.

MR. JUSTICE LURTON delivered the opinion of the court.

In an independent libel proceeding instituted in the

223 U. S.

Opinion of the Court.

District Court by the owner of the steamer *George W. Elder*, against the Metropolitan Lumber Company, the claimant of the steamer *San Pedro*, the libellant, recovered a decree for services rendered in towing her to port after she had been injured in a collision with the steamer *Columbia* off the coast of California. This decree was rendered at a time when there was pending in the same court a separate proceeding for limitation of liability brought by the Metropolitan Lumber Company, as owner of the *San Pedro*.

Before coming to the substantial questions, we may notice certain objections to any judgment which shall operate to set aside the decree in favor of the appellees. It is said that the appellant does not assail the decree in respect to its merits or the amount of the allowance; that nothing but further delay, expense and inconvenience will result if appellees are required to present and again prove the claim in the liability cause; and, finally, it is said that the pendency of the other suit was not pleaded until the case was about to be heard upon immaterial objections to the commissioner's report.

Conceding all that can be said about the expense, delay and inconvenience which will result if the salvage claimants are to be required to present their claim in the limited liability case, yet far greater confusion must result if such objections are enough to defeat the manifest object of the fifty-fourth rule. This court, in furtherance of the apparent purpose of Congress to limit the liability of vessel owners (Revised Statutes, §§ 4283-5), has, by that rule, prescribed how an owner may avail himself of the benefit of the statute. The very nature of the proceeding is such that it must be exclusive of any separate suit against an owner on account of the ship. The monition which issues when the vessel has been surrendered, and a stipulation entered into to pay the value into court, requires every person to assert his claim in that case.

The appellant, owner of the *San Pedro*, appears to have proceeded strictly in compliance with the fifty-fourth admiralty rule. There was a due appraisalment of the *San Pedro* and her pending freight and a stipulation entered into, with sureties, for the value so appraised, and a monition duly issued, requiring all persons to present their claims and make proof. In that situation, the jurisdiction of the court to hear and determine every claim in that proceeding became exclusive. It was then the duty of every other court, Federal or state, to stop all further proceedings in separate suits upon claims to which the limited liability act applied.

Nor is the issuance of an injunction necessary to stop proceedings in separate or independent suits upon such claims. Power to grant an injunction exists under § 4285, Revised Statutes, when necessary to maintain the exclusiveness of the jurisdiction; but when the procedure provided by rule 54 has been followed and a monition has issued "against all persons claiming damages . . . citing them to appear before said court and make proof of their respective claims," etc., it is the duty of every other court, when the pendency of such a liability petition is pleaded, to stop. The very nature of the proceeding and the monition has the effect of a statutory injunction. Indeed, that is the express declaration of the statute.

The view we take of the statutory injunction declared by § 4285, Revised Statutes, and of its application to cases where the vessel has been surrendered and a stipulation entered into as provided by admiralty rule 54, as a proceeding tantamount to a "transfer" of the ship as authorized by § 4285, Revised Statutes, is fully supported by the leading case of *Providence & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578, 594, 599, 600 and 601. That was a suit in a state court against the owner of a steamship to recover for goods lost by the burning of a steamer. While the suit was pending the owner filed his petition

223 U. S.

Opinion of the Court.

in the proper District Court for the benefit of the limited liability statute. The proceedings seem to have been conducted in accordance with admiralty rule 54, but, in addition, the petitioners made application, as permitted by that rule, for an order restraining the prosecution of "all and any suits" against the owner in respect of claims subject to the provisions of the act. The owner and defendant in the suit pending in the state court thereupon, by plea, set up the limited liability suit as a reason why the state court should proceed no further. This was overruled. Later the defendant therein pleaded the final decree in the liability suit as a bar to any decree in the state court against him, as owner. This, too, was disregarded, and a decree rendered against the owner for the claim for damages caused by the burning of the steamer and the plaintiff's goods. This was affirmed in the Supreme Judicial Court of Massachusetts and brought here upon writ of error. After a consideration of the meaning and purpose of the limited liability act of 1851 (March 3, 1851, 9 Stat. 635, c. 43), §§ 4283, 4284 and 4285, Revised Statutes, and of admiralty rule 54, the court said (p. 594):

"We have deemed it proper to examine thus fully the foundation on which the rules adopted in December term, 1871, were based, because, if those rules are valid and binding (as we deem them to be), it is hardly possible to read them in connection with the act of 1851 without perceiving that after proceedings have been commenced in the proper district court in pursuance thereof, the prosecution *pari passu* of distinct suits in different courts, or even in the same court by separate claimants, against the ship owners, is, and must necessarily be, utterly repugnant to such proceedings, and subversive of their object and purpose."

Later, the court added (pp. 599, 600):

"Proceedings under the act having been duly instituted in this court, it acquired full jurisdiction of the subject-

matter; and having taken such jurisdiction, and procured control of the vessel and freight (or their value), constituting the fund to be distributed, and issued its monition to all parties to appear and present their claims, it became the duty of all courts before which any of such claims were prosecuted, upon being properly certified of the proceedings, to suspend further action upon said claims."

* * * * *

"The operation of the act, in this behalf, cannot be regarded as confined to cases of actual 'transfer,' (which is merely allowed as a sufficient compliance with the law), but must be regarded, when we consider its reason and equity and the whole scope of its provisions, as extending to cases in which what is required and done is tantamount to such transfer; as where the value of the owners' interest is paid into court, or secured by stipulation and placed under its control, for the benefit of the parties interested."

It was urged in that case that by virtue of § 720, Revised Statutes, the District Court had no authority to issue an injunction. But as to this, the court said (p. 600):

"This view of the statutory injunction, and of its effect upon separate actions and proceedings, renders it unnecessary to determine the question as to the legality of the writ of injunction issued by the District Court. Although we have little doubt of its legality, the question can only be properly raised on an application for an attachment for disobeying it. As the writ was issued prior to the adoption of the Revised Statutes, the power to issue it was not affected by any supposed change of the law introduced into the revision, by the 720th section of which the prohibition of the act of 1793 in regard to injunctions against proceedings in state courts has this exception appended to it: 'except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' Under the rule of '*expressio unius*' this express exception may be urged as having the effect of exclud-

223 U. S.

Opinion of the Court.

ing any other exception; though it is observable that the injunction clause in the act of 1851 is preserved without change in section 4285 of the Revised Statutes, and will probably be construed as having its original effect, due to its chronological relation to the act of 1793."

But after an intimation that § 720 did not apply, the court added (p. 601):

"But, as before indicated, the legality of the writ of injunction is not involved in this case. In our opinion the state court, in overruling the plea of the defendants, which set up the proceedings pending in the District Court, and in ordering the cause to stand for trial; and again, on the trial, in overruling as a defense the proceedings and decree of the District Court as set up in the amended answer, disregarded the due effect, as well as the express provisions, of the act of 1851, and therein committed error. It was the duty of the court, as well when the proceedings pending in the District Court were pleaded and verified by profert of the record, as when the decree of said court was pleaded and proved, to have obeyed the injunction of the act of Congress, which declared that 'all claims and proceedings shall cease.'"

But it is contended that a salvage claim, such as the one here involved is not a claim for "damages or injury by collision" within the meaning of § 4283, Revised Statutes, and therefore not one to which the limited liability act applies; that the damages there referred to are damages by collision to other vessels and their cargo, and that the expense of being towed to port is a claim like one for repairs. It is also said that even if the vessel owners may be able to include what they must pay for such a service in the damages recoverable from the guilty vessel, it is notwithstanding not a damage arising from collision within the meaning of that section.

But we need not consider whether the claim is one against the owner of the character described either in

§ 4283 or the succeeding, § 4284. Those sections have been amended by the eighteenth section of the act of June 26, 1884 (23 Stat. 55, c. 121), so as to include "any and all debts and liabilities" of the owner incurred on account of the ship without his privity or fault. *Richardson v. Harmon*, 222 U. S. 96.

The service was rendered to the *res*, benefiting alike owner and creditors. The claim is, therefore, of a highly meritorious character. But the question of preference in payment out of the fund is one to be determined in the limited liability case. We, therefore, express no opinion as to whether such a claim may be preferred or must share pro rata with others.

The court below erred in proceeding to render a decree after the pendency of the suit for a limitation of liability was pleaded.

Decree reversed.